ANAVE – Circular de Régimen Interior

Madrid, 1 de marzo 2016
Ref.: UE 1/2016/EC

Asunto: Aspectos de interés para las empresas navieras en la aplicación de las Directrices comunitarias sobre ayudas de Estado al transporte marítimo 2004.

Muy Sres. nuestros:

La Comisión Europea (CE) inició hace cuatro años una investigación sobre la legislación griega en materia de fiscalidad y otras medidas nacionales de apoyo a las empresas navieras.

Recientemente, se ha hecho pública la carta enviada por la CE al gobierno griego con sus conclusiones de esta investigación, en la que se declara que **muchos aspectos de la legislación griega son ayudas de Estado incompatibles** con las Directrices comunitarias sobre ayudas de Estado al transporte marítimo 2004, si bien, se las califica como "ayudas existentes" y, en consecuencia, determina que Grecia **debe modificar su legislación** para alinearla con la normativa comunitaria, pero **no se imponen sanciones** ni a las empresas ni al Estado griego.

Aunque este caso no tiene ninguna repercusión directa sobre las empresas navieras españolas, la carta repasa muchos aspectos de las propias Directrices y, **amplía y repasa la interpretación** que la CE ha dado a las mismas en diversos casos con varios Estados miembros.

Dada la extensión de la carta, que adjuntamos en todo caso por si fuese de su interés, hemos elaborado una nota que resume **algunos aspectos de dicha carta que entendemos pueden ser de interés para la aplicación de las Directrices por las empresas navieras españolas**, y que también **adjuntamos.**

Estamos, como siempre, a su disposición para tratar de aclarar cualquier duda que puedan tener sobre este asunto.

Muy cordialmente,

Manuel Carlier
Director General

EUROPEAN COMMISSION

Brussels, 21.12.2015
C(2015) 9019 final

PRELIMINARY PUBLIC VERSION
containing information that is undisputedly non-confidential and might be reviewed later.

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Subject: **State aid SA.33828 (2012/E, 2011/CP) – Tonnage tax scheme and other tax relieves provided in Law No 27 of 19 April 1975 as amended**

Sir,

The Commission wishes to inform Greece that, having examined the information supplied by the Greek authorities on the measure referred to above, it has decided to propose appropriate measures pursuant to the procedure laid down in Article 108(1) of the Treaty of the Functioning of the European Union (hereinafter "TFEU") and Article 22 of Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union[1] (hereinafter "Procedural Regulation").

[1] OJ L 248 of 24.9.2015, p. 9. With effect from 14 October 2015, Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p.1, was repealed and replaced by Regulation (EU) No 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), OJ L 248, 24.9.2015, p. 9. Pursuant to 35 of Regulation 2015/1589, any reference to Regulation 659/1999 shall be construed as a reference to Regulation 2015/1589 and shall be read in accordance with the correlation table in Annex II to the latter regulation. In the text of the present Decision reference is made to the articles of Regulation 2015/1589, although procedural steps taken during the course of the proceedings prior to 14 October 2015 were, of course, adopted under the equivalent articles of Regulation 659/1999 (applicable at the time).

His Excellency Mr Nikos Kotzias
Minister of Foreign Affairs
Address: 1st Vas. Sofias Av.
106 71 Athens, Greece

1. PROCEDURE

1.1. Ex-officio procedure (SA.33828; 2011/CP)

(1) By letter dated 4 November 2011, the Commission requested information from Greece on possible measures applied by it in favour of the shipping sector, in particular under *Law No 27 of 19 April 1975 on the taxation of ships, application of a duty for the development of merchant shipping, establishment of foreign shipping companies and related matters* (hereinafter "Law 27/1975") within the context of ex-officio case registered under number SA.33828, 2011/CP.

(2) The Greek authorities responded to this request for information on 3 and 11 January 2012.

1.2. Article 21 letter of 31 July 2012 (SA.33828; 2012/E)

(3) By letter dated 31 July 2012 (hereinafter "Article 21 letter"), the Commission, in accordance with Article 21 (2) of the Procedural Regulation, informed the Greek authorities of its preliminary view that a number of provisions of Law 27/1975 were in breach of the Maritime Guidelines[2] and therefore seemed to constitute State aid incompatible with the internal market in accordance with Article 107 TFEU.

(4) In particular, in its Article 21 letter the Commission questioned the following:

a) the eligibility, under the tonnage taxation scheme, of certain vessels, such as fishing vessels and floating drilling platforms[3] as well as of all types of tugboats and dredgers without respecting the limitations of the Maritime Guidelines;

b) the absence of the flag-link requirement for vessels involved in international maritime transportation;

c) the existence of tonnage tax rebates which are discriminatory and could lead to taxation level falling below what was accepted for other Member States;

d) the unconditional inclusion of all revenues from ships under tonnage taxation;

e) the absence of clear legal provisions preventing that companies specialising in ship leasing benefit from tonnage taxation;

f) the absence of rules on capital gains taxation for ships acquired before the entry into tonnage taxation;

g) the weak ring-fencing rules;

h) the absence of the provisions on aid ceiling/cumulation;

i) the exemption from corporate income taxation of numerous maritime cluster companies, in particular companies involved in freightage, insurance, damage adjustment, brokerage of sales transactions or of shipbuilding or of freightage or

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[2] Commission communication C(2004) 43 — Community Guidelines on State aid to maritime transport (OJ C13 of 17.01.2004, p.3).

[3] Platforms designed or converted for exploration, sea-bed drilling, sea pumping, refining or storing oil or natural gas.

of insurance for ships flying a Greek or foreign flag over 500 gross tonnes[4], as well as in representation of ship-owning companies;

j) the exemption from taxation of dividends and capital gains, as well as from inheritance tax at the level of shareholders of ship-owning and ship-management companies.

(5) The Greek authorities were invited to submit their comments in accordance with Article 21(2) of the Procedural Regulation.

(6) The Greek authorities replied to the Article 21 letter by letter of 2 November 2012 as supplemented on 14 February 2013.

(7) On 19 February 2013 a meeting took place in Brussels between the Commission and the Greek authorities to discuss the issues raised in the Article 21 letter.

(8) Following additional requests for information sent by the Commission on 5 April 2013 and 15 August 2013, the Greek authorities replied by letters of 27 June 2013 and 20 November 2013.

(9) Another meeting took place on 19 December 2013 in Brussels between the Greek authorities and the Commission to discuss the issues covered by the existing aid procedure.

(10) On 30 July 2015, the Greek authorities informed the Commission about the Law[5] ratifying the agreement signed between the Greek Government and the Shipping Community. This agreement provides for voluntary contributions of shipping companies to the Greek public budget, for the period 2014 – 2017, in the context of the financial crisis.[6] Part of this annual contribution is equal to the annual tonnage tax paid for every Greek or foreign-flagged ship managed from Greece. Another part of this contribution refers to the shipping community's acceptance of a "special solidarity contribution"[7] – to be levied on incomes of natural persons, including repatriated dividends for the shipping companies' shareholders[8].

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Tonnage tax scheme and benefits available to shareholders of ship-owning and ship-management companies

2.1.1. Eligible vessels under the tonnage tax scheme

(11) In Greece, all vessels except for non-self-propelled pontoons are eligible to tonnage taxation.

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4 Except for coastal passenger vessels and commercial vessels plying domestic routes.

5 Law No 4301/2014.

6 See Article 3 of the agreement (quoted in Article 42 of Law No 4301/2014), as amended.

7 Article 29 of Law 3986/11 (as amended by article 1(7) of Law 4334/2015).

8 E.g. for total net income of one hundred thousand and one (100.001) Euros to five hundred thousand (500.000) Euros, the special contribution is calculated at six percent (6%) for the whole amount (dividends from shipping companies included), whereas for total net income of five hundred thousand and one (500.001) Euros or more, the applicable rate is eight percent (8%).

(12) Article 3 of Law 27/1975 distinguishes between First Class (Category A) and Second Class (Category B) ships to which different tonnage tax rates are applicable.

(13) Category A includes the following types of vessels:

a) engine-propelled cargo ships, tankers and refrigerator ships with gross tonnage equal to or exceeding 3 000 tonnes;

b) iron-hulled cargo ships for dry and liquid loads and refrigerator ships with gross tonnage exceeding 500 tonnes, but no more than 3 000 tonnes, whose itinerary includes calls at foreign ports or which ply between foreign ports;

c) passenger ships the itineraries of which include calls at foreign ports or plying between foreign ports;

d) passenger ships with gross tonnage above 500 tonnes, which for a period of at least six months during the past year have exclusively carried out regular tourism voyages between Greek ports or between Greek and foreign ports, or only between foreign ports, for the recreation of their passengers, after public advertisement of the said ships (tourism or cruise ships).

e) Floating drilling platforms with displacement exceeding 5 000 tonnes, floating platforms for refining or storing oil with gross tonnage exceeding 15 000 tonnes, designed or converted for exploration, sea-bed drilling, sea pumping, refining or storing oil or natural gas.

(14) Category B covers all other engine-driven ships, sailing ships and all other types of boats, in particular, fishing vessels, sailing boats and small craft in general.

(15) Pursuant to Article 2 of Law 27/1975 income derived from the operation of the ship is exempted from income tax and is subject to tonnage tax instead.

2.1.2. Eligibility for exemption from usual income taxation for entities gaining income from ownership or management of eligible ships and their shareholders

(16) In Greece, tonnage taxation applies to owners and managers of Greek flagged vessels[9] and of foreign flagged vessels above 500 tonnes involved in international transportation and managed from Greece.[10] Since recently, tonnage tax applies also to owners of non-Greek EEA flagged vessels involved in domestic transportation in Greece (irrespective of tonnage) and involved in international transportation (up to gross tonnage of 500 tonnes).[11] Payment of tonnage tax exempts as well the shareholders of the relevant entities from income tax liability.[12]

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9 Article 1 of Law 27/1975.

10 Articles 26 and 25 of Law 27/1975. Managers of foreign flagged vessels managed from Greece are jointly liable (with the owner of the vessel) to pay the tonnage tax.

11 Article 26A of Law 27/1975. This is without prejudice to double taxation or shipping agreements.

12 Article 2 of Law 27/1975.

(17) In addition, in accordance with Article 29 of Law 27/1975, exemption from inheritance tax applies with regard to transfers of vessels, stocks or shares of Greek or foreign companies that own vessels flying a Greek or foreign flag with gross registered tonnage of over 1 500 and of stocks or shares of holding companies that hold stocks or shares of the aforementioned ship-owning companies, whether directly or through holding companies.

2.1.2.1. Taxation of owners and managers of Greek flagged vessels and shareholders of the relevant entities

(18) In accordance with Articles 1 and 2 of Law 27/1975, the payment, by the owners of Greek-flagged ships, of the tonnage tax constitutes fulfilment of all liability of the ship-owner and of shareholders or other type of owners (e.g. partners) of any Greek or foreign company in respect of income tax on profits from the operation of ships. This exemption covers also all capital gains realised at the level of ship-owner/shipping company and their shareholders. In accordance with Article 4 of Law 27/1975, ship-managers of such ships are jointly liable to pay the tonnage tax but are not subject to tonnage tax as such. According to the Greek authorities, the ship-owner who bears the primary liability to pay tonnage tax is a (foreign) company often owned by the same beneficial owners as the ship-management company.

(19) By contrast, in accordance with the general rules on taxation[13], dividends received by shareholders are normally subject to taxation in Greece. Similarly, capital gains from sale of shares are also normally taxed in Greece[14].

2.1.2.2. Taxation of owners of ships involved in international transportation and managed either through Greek offices of foreign companies or through Greek companies.

(20) Similarly, Greek or foreign companies established in Greece under Article 25 of Law 27/1975[15] and gaining income from the exploitation or management of Greek or foreign-flagged vessels above 500 gross tonnes[16] (including foreign flagged lifeboats or tugboats of any tonnage), and owners of such companies, are exempted from any tax, duty, levy, contribution or deduction in respect of income obtained from the operation of ships, as long as tonnage tax is paid by the owner of the vessel in accordance with Articles 4, 25 and 26 of Law 27/1975. Ship management companies established under Article 25 of Law 27/1975 are jointly liable with the ship-owning companies for payment of the tonnage tax in accordance with Article 26 of Law 27/1975.[17] Tonnage tax and any similar charge paid abroad in respect of

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13 See, in particular, Articles 36, 40 and 64 of Law 4172/2013 (hereinafter "Income Tax Code"). In principle, the taxation rate of dividends is 10%.

14 See, in particular Articles 42 and 43 of the Income Tax Code. In principle, the taxation rate of capital gains is 15%, except if they constitute business income.

15 With respect to foreign flagged ships, the joint tax liability concerns companies managing and exploiting ships over 500 gross tonnes (except for coastal passenger vessels and commercial vessels plying domestic routes) and tugboats and lifeboats of any tonnage.

16 Except for coastal passenger vessels and commercial vessels plying domestic routes.

17 Ship-management companies have no primary liability to pay tonnage tax, but can be jointly liable with ship-owning companies for the payment of tonnage tax by the latter. Thus, in principle, Greek tonnage tax has to be paid by ship-owning companies with respect to each ship managed from Greece. A ship-owning company can often be a foreign company owned by the same beneficial owners as the

the vessel flying a non-Greek flag are deducted from the amount of the tonnage tax to be paid in Greece (Article 26(5) of Law 27/1975).

(21) The same exemption from any tax, duty, contribution or deduction also applies to shareholders or other type of owners (e.g. partners) in ship-owning companies, for income they receive from distribution of net profits or dividends, whether directly or from holding companies, regardless of the number of holding companies between the ship-owning company and the final shareholder or partner. Exemption from any tax also applies to the transfer on any grounds of stocks of Greek or foreign companies that own a vessel flying a Greek or foreign flag and of holding companies that directly or indirectly hold stocks or shares of the ship-owning companies. The tax exemption also applies to the profits of shipping companies established under Law 959/1979 and dividends distributed by them, where they are covered by Article 25 of Law 27/1975 and operate or manage a vessel flying a Greek or foreign flag.[18] Furthermore, by virtue of Article 25(5) of Law 27/1975, the distribution of profits to owners of Greek limited liability companies falling under Article 25 of that Law is exempted from revenue tax.

2.1.2.3. Taxation of owners of non-Greek EEA vessels

(22) Finally Article 26A of Law 27/1975, as added by Law 4336/2015, provides that owners of EEA flagged vessels involved in domestic transportation (irrespective of tonnage) and involved in international transportation (up to gross tonnage of 500 tonnes) are eligible for tonnage tax.

(23) Payment of the tonnage tax constitutes fulfilment of all liability of persons or companies that own vessels in respect of income tax on the income generated from activity specified in Article 26A. The same exemption from income tax applies to shareholders or other type of owners (e.g. partners) of the above companies, including natural persons, on income earned in the form of distribution of net profits or dividends.

2.1.3. Rates of tonnage tax

(24) Under the provisions of Law 27/1975, all vessels flying the Greek flag or managed/operated from Greece (under the conditions of Articles 25 and 26 of Law 27/1975) or flying an EEA flag (under the conditions of Article 26A of Law 27/1975) are subject to an annual tax which varies according to the category, age and tonnage of each vessel. The payment of the tonnage tax replaces obligations under the usual income taxation rules (see the provisions described in the previous section).

(25) Category A vessels (such as cargo ships, oil tankers, reefers, large passenger ships – see above), are taxed under the provisions of Article 6 of Law 27/1975, according to their age and gross tonnage (hereinafter "GT"). As in practice Greek-flagged Category A vessels are simultaneously benefiting from Article 13 of Legislative

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(jointly liable) Greek ship-management company in charge of that ship. In cases of foreign flagged vessels (which constitute nearly three quarters of the Greek controlled fleet) the tax liability can be in practice transferred to Greek ship-management companies, given the difficulties of enforcing tax liability at the ship-owners' level in such cases.

[18] Article 26(11) of Law 27/1975, as amended by Article 24 of Law 4110/2013.

Decree 2687/1953[19], the rates specified in Article 6 of Law 27/1975 are adjusted in line with provisions contained in the Ministerial Decisions concerning such ships. The latter provide 40% reduction to the applicable tax per tonne of gross tonnage according to Law 27/1975. The tonnage tax applicable is further reduced by 50% for ships of a gross tonnage between 40,001 to 80,000 metric tonnes and by 75% for ships of a gross tonnage from 80,001 and over.

(26) For the year 2015, the rates are those set out in Table 1 below:

Table 1 - Tax rates for Category A vessels

Age of vessel in years	Rates US dollars per GT
0-4	0.420
5-9	0.752
10-19	0.737
20-29	0.697
30 years and over	0.539

(27) The tax amounts in US dollars are multiplied by the rates set out in Table 2 according to the GT of the vessel:

Table 2 – tonnage tax rate adjustment depending on the tonnage of vessel

GT brackets	Basic TT rate adjustment depending on the tonnage
100-10 000	1.2
10 001-20 000	1.1
20 001-40 000	1
40 001-80 000	0.45
80 001 and above	0.2

(28) Under Law 4336/2015, the rates of the tonnage tax set in Article 6(1) of the Law 27/1975 are to be increased annually by 4% for the years 2016 to 2020.

(29) Tax on vessels belonging to Category B (mostly small vessels, not involved in international transportation, such as fishing boats and recreational craft – see above) is also calculated annually according to the GT of the vessel and is paid in euros as set out in Table 3:

[19] Decree on "investment and protection of foreign capital", which grants the status of protected investments to ships over 1500 GT owned by foreign companies while still being controlled by Greek interests.

Table 3 – tax rates for Class B vessels

GT bracket	Tax Rate bracket (in euros) per GT	Tax bracket (in euros)	GT	TOTAL Annual tax (in euros)
20	0.60	12	20	12
30	0.70	21	50	33
50	0.76	38	100	71

* For over one hundred (100) GT, the tax is set at 1 euro per GT.

(30) In a case of a ship of 100 GT this means that the first 20 GT the tonnage are taxed at a rate of EUR 0.60 per GT, the next 30 GT are taxed at a rate of EUR 0.70 per GT and the last 50 GT are taxed at a rate of EUR 0.75 per GT, which makes EUR 71 for the entire ship. For the ship of 200GT, the tax due would be EUR 171, as all tonnage above 100GT is taxed at 1 EUR per GT.

2.1.3.1. Reductions of the tonnage tax

(31) Article 7(1)(b) of Law 27/1975 provides that the tonnage tax rate for Category A ships is reduced by 50% for cruise ships and for all ships engaged in international voyages, whereas voyages between Greek ports are excluded.

(32) Article 12(2) of Law 27/1975 stipulates that the tonnage tax rate for Category B ships is reduced by (a) 50% for all ships engaged in international voyages, whereas voyages between Greek ports are excluded; (b) by 60% for passenger ships, whether engine driven or sail-propelled; and (c) by 75% in the case of fishing vessels.

(33) Furthermore, Article 13 of Law 27/1975 provides for the following reductions for Category B ships: (a) 50% for five years for cargo ships, tankers and refrigerator ships between 10 and 20 years of age first placed under the Greek flag; (b) two-thirds reduction for a period of ten years for the same type of ships as in point (a) and passenger ships which are at least 20 years old, if they are repaired in Greece; (c) two-thirds reduction for a period of five years for ships between 10 and 15 years old, at least 50% owned by persons with Greek nationality or by companies established under Greek law, if this ship replaces a ship more than 20 years old belonging to the same owners, the GT of which is at least two-thirds of the tonnage of the ships they have replaced.

2.1.3.2. Exemptions from payment of tonnage tax

(34) Law 27/1975 provides for a number of exemptions from payment of tonnage tax and of other taxes. In particular, the following Category A and Category B ships are exempted from payment of tonnage tax[20]:

a) Ships built in Greece and flying the Greek flag are exempt from any tax until they are 6 years old, in the case of Category A ships registered in Greece, or 12 years old for Category B ships registered in Greece;
b) Category A ships registered in Greece that are less than 20 years old and have been repaired in Greece are exempt from tonnage tax for a number of years

[20] Contained in Articles 7 and 13 of Law 27/1975.

corresponding to one year for every $100 000 spent in Greece on repairs; the total amount of the exemption so granted cannot exceed 50% of the total cost of repairs and the exemption is valid for a maximum of six years.

c) Category B ships registered in Greece benefit from the following exemptions: (i) ships less than 10 years old are exempted from tonnage tax until they are 10 years old (ii) cargo ships less than 30 years old flying the Greek flag are exempted from tonnage tax for five years as from the date of registration as long as they ply regular routes to Greek and foreign ports or only to foreign ports during this period.

2.1.4. Flag link requirements

(35) Under Law 27/1975[21], with respect to coastal passenger vessels and commercial vessels plying domestic routes, only ships flying the Greek flag or other EEA flags are eligible to the tonnage tax.

(36) However, ships over 500 gross tonnes benefit from tonnage taxation independently of the flag of the ship, on the basis of Articles 25 and 26 of Law 27/1975.

2.1.5. Ring-fencing measures

(37) If a company which owns a ship flying the Greek flag has other commercial activities than the operation of the ship, Law 27/1975 exempts from income tax the net profits which correspond *pro rata* to the gross income the owner derives from ships subject to the tonnage tax regime.[22]

2.2. Taxation of other maritime cluster companies and their shareholders

(38) Offices or branches of foreign or Greek companies established in Greece pursuant to Article 25 of Law 27/1975 and engaged exclusively in the freightage, insurance, damage adjustment, brokerage of sales transactions or of shipbuilding or of freightage or of insurance for ships flying a Greek or foreign flag over 500 gross tonnes, except for coastal passenger vessels and commercial vessels plying domestic routes, or engaged in representing shipping companies, are exempted from payment of usual taxes, levies, charges or contributions in favour of the State.

(39) Based on the explanations provided by the Greek authorities, maritime insurance intermediation includes all necessary actions and services aimed at ensuring sufficient insurance coverage of the activities of the vessel that may include: (i) Protection and Indemnity (P&I) Third Parties Liability Cover; (ii) Hull and Machinery Insurance for the value of the vessel; (iii) War Risk Insurance Cover; (iv) Loss of Hire Cover and Charterer's Default Insurance Policy. Those processes also apply *mutatis mutandis* to the purchase of second hand vessels. In most cases the vessel is placed, following delivery to the owner, under the management of the company that acted as a mediator for its purchase/acquisition.

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[21] As amended by Law 4110/2013 and Law 4336/2015.

[22] Article 2(3) of Law 27/1975 provides that if a "Greek or foreign company which owns a ship flying the Greek flag has other commercial activities than the operation of the ship, it shall be exempted from income tax for a quantity of the net profit or dividends which corresponds *pro rata* to the gross income of the said company derived from the ship".

(40) Based on the explanations provided by the Greek authorities, concerning brokerage related to shipbuilding activities, the scope of the eligible activity is: all necessary actions/services that ensure the unhindered final delivery of a vessel are included, from placement of the ship building order to delivery of the newly built vessel to the owner. This includes such duties as the day-to-day communication with the shipyard, supervision of construction through the site team, scrutiny of the ship building contracts and finding available financing resources. These processes also apply *mutatis mutandis* to the purchase of second hand vessels. In most cases the vessel is placed, following delivery to the owner, under the management of the company that acted as a mediator for its purchase/acquisition.

(41) As regards damage adjustment activities, under Articles 219-234 of Law 3816/1958 (Private Maritime Law Code) damage adjustment means *"the damages and extraordinary costs incurred voluntarily based on reasonable judgment with a view to saving the vessel and cargo from common maritime hazard, provided that the intended beneficial result has occurred"*. Article 233 stipulates that *"the damage adjustment shall be settled at the final port of unloading or at the port where the voyage was interrupted, by the care of the master or the earliest petitioner, by expert settlers, as appointed by the Presiding Judge of the Court of First Instance or by the Justice of the Peace, or by a consular or local authority for foreign countries. The adjustment shall be ratified by the Presiding Judge of the Court of First Instance, or by a consular or local authority for foreign countries"*.

(42) By virtue of Article 43 of Law 4111/2013,[23] all the above maritime cluster undertakings shall import at least 50 000 USD equivalent of funds per year for covering operating expenses of their offices and pay an annual levy for eight years (2012-2019) on the annual amount of total foreign currency imported and converted into euro, which shall be calculated on the basis of the following scale:

For the period 2012-2015:

Bracket of total annual foreign currency imported and converted into euros (in USD)	% rate	Tax on bracket	Total foreign currency converted in euro (in USD)	Total tax (in USD)
First 200 000	5	10 000	200 000	10 000
next 200 000	4	18 000	400 000	18 000
Surplus	3			

For the period 2016-2019:

Bracket of total annual foreign currency imported and converted into euros (in USD)	% rate	Tax on bracket	Total foreign currency converted in euro (in USD)	Total tax (in USD)
200 000	7	14 000	200 000	14 000
200 000	6	12 000	400 000	16 000
Surplus	5			

[23] As amended *inter alia* by Law 4141/2013 and by Law 4336/2015 of 14 August 2015, on the ratification of the draft Contract for Financial Assistance by the European Stability Mechanism and regulations for the implementation of the Financing Agreement.

(43) Based on Article 45 of Law 4141/2013, the dividends received by natural persons subject to taxation in Greece from the above companies shall be subject to taxation at a rate of 10%. This withholding tax shall cover all tax liabilities of the beneficiary, shareholder or other type of owners (e.g. partner) of the above undertakings, identified as natural persons, for the income gained in the form of distributed net profits or dividends. The same provisions shall also apply to profits distributed by the above companies, in the form of premiums and bonuses, to members of the board of directors, directors and executives, in addition to salaries.

3. POSITION OF THE GREEK AUTHORITIES

3.1. General comments

(44) The Greek authorities stressed that the measures referred to in Article 21 letter were in place before the accession of Greece to the EU.

(45) The adoption of Laws referred to in Article 107(1) of the Greek constitution, notably Article 13 of Legislative Decree 2687/1953 and Law 27/1975 with regard to Greek flagged vessels, created the necessary preconditions for the repatriation of Greek-controlled ships either by registering them under the Greek flag or by managing them via a management company[24] established in Greece. This resulted in the Greek-controlled fleet to rank first in the world, accounting for 14.83% of the world's Dead-Weight Tonnage and having a young fleet consisting of state-of-the-art and competitive vessels.

(46) Overturning the fundamental, substantive parameters of the present regime could endanger the competitiveness of the Greek maritime sector, especially taking into account measures taken in other maritime jurisdictions, such as China, Dubai and Singapore. This, in turn, would have a negative effect on the Union maritime sector as a whole and would go against the maritime policy objectives of the Union.

(47) Maritime transport is a strategic sector for the Union which plays a catalyst role in trade, economic growth and employment. This is confirmed by the Commission in:

a) Communication "Strategic goals and recommendations for the EU's maritime transport policy until 2018";

b) The Maritime Guidelines aiming at safeguarding the shipping industry and the relevant know-how in the EU;

c) The White Paper entitled "Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system".

(48) Finally the Greek authorities stress the following aspects of the Greek shipping taxation system which are more onerous than in other Member States:

a) when calculating the tax according to the Greek taxation system, the ship's gross tonnage (GT) and not the net tonnage (NT) is taken into account, as is the case in other Member States (resulting in a generally increased tax burden);

[24] Company which would normally be responsible for the overall management of the ship (technical, crew and commercial management).

b) Greek-flagged ships which, following classification, are subject to the tonnage tax scheme are required, under Greek law, to reserve posts for Greek/Union seafarers; this arrangement was recently broadened to include also cadet-officers working on foreign-flagged vessels whose managers are established in Greece;

c) submission to the tonnage tax scheme is mandatory in the Greek system, whereas in other Member States submission to the tonnage tax scheme is optional; therefore there is no possibility to profit from accelerated depreciation and be exempt from taxation in the periods of losses.

d) with regard to Greek-flagged ocean-going vessels, Greek shipping companies traditionally use different and separate legal entities for each activity: a company owning a ship registered under Article 13 of Legislative Decree 2687/1953 and a management company under Article 25 of Law 27/1975. The reason for this is the protection of investment under the Constitution as foreign investment, as well as the protection from expropriation and changes in the legal provisions/framework. These activities are complementary expressions of a single operation. This operational model is not encountered in other European countries, where the same legal entity is generally both the operator and the ship-owner.

(49) Therefore Greece calls on the Commission to take a broader view and to weigh the beneficial effects of aid against its adverse effects on competition by reference to Article 107(3)(c) TFEU and not confine its analysis to compliance with the Maritime Guidelines.

3.2. Comments of the Greek authorities on the tonnage tax scheme

3.2.1. Eligible vessels

(50) The Greek authorities confirmed that all types of vessels, except non-self-propelled pontoons, are *de jure* eligible for the tonnage tax scheme pursuant to Law 27/1975. To justify application of tonnage tax to certain types of vessels, the Greek authorities submitted the following arguments:

3.2.1.1. Fishing vessels

(51) According to the Greek authorities, the income generated by fishing vessels of not more than 10 tonnes is not subject to tonnage tax, but is subject to the general provisions on agricultural undertakings. Vessels above 10 tonnes are subject to taxation based on gross registered tonnage (Article 12 of Law 27/75).

(52) The Greek authorities also stressed that the income generated by eligible fishing vessels is subject to tonnage tax to the extent that it is not income from subsequent "industrialisation of goods or repeated retail sale".

(53) The Greek authorities consider that the inclusion of the Greek flagged fishing vessels in the tonnage tax scheme could be considered compatible on the basis of Article 107(3)(c) TFEU, once the beneficial effects of the aid have been weighed against its adverse effects, taking account in all cases of the increase in the price of fuel and, more importantly, the huge reduction in fishery stocks, which has reduced catches and hence the profit derived from such operations. The majority of such operations are local activities which do not venture on to the high seas.

3.2.1.2. Tugboats

(54) As there are no navigable rivers and lakes in Greece only sea-going tugboats are covered by the tonnage taxation. Similarly tugboats are rarely used to tug vessels without engine from port to port. 99% of tugboat activities concerns towing of vessels calling at ports for loading and unloading and assisted by tugboats and pilots to go through channels difficult to pass, from the berth or the pilot station to the docks of the main ports. From this perspective, the provision of towing services is inherent in maritime transport, since tugboats offer the necessary shipping support to maritime transport. It should be noted that towing is initiated almost exclusively outside the borders of ports (at least 7-8 nautical miles away). The licence granted to tugboats covers the performance of towing services throughout the Greek territory and not in a specific port area. Consequently, the Greek authorities consider that tugboats provide maritime transport services more than 50% of their operational time.

3.2.1.3. Dredgers

(55) No dredgers currently benefit from the Greek tonnage tax, although there are no legal obstacles for this.

3.2.1.4. Floating rigs and floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas

(56) Floating rigs and floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas, they are treated as vessels providing services on the sea, in relation to the business models and the technical requirements on safety and maritime environment protection, manning with qualified crew, legal status, acute international competition and contribution to maritime cluster development. Those vessels are eligible for tonnage tax under applicable legislation even though in practice there are currently no vessels of this category managed from Greece.

(57) The management of floating refineries is an activity mainly exercised in the North Atlantic. Given the geopolitical developments in the Eastern Mediterranean area, though, the management of such activities by Union undertakings could promote the energy efficiency (or even energy independence) of the Union.

3.2.1.5. Other

(58) There is no information about floating casinos, floating hotels and similar vessels that are managed by Greek companies.

3.2.2. Inclusion of all revenues from ships in the tonnage taxation

(59) The Greek authorities stressed that the tonnage tax system only applies to activities related directly to the operation of the ship and to genuine shipping entities.

(60) Ancillary activities on traditional passenger ships and cruise ships do not constitute the primary purpose of sea round trips. At the same time, cruise ships need to be able to provide all the services that passengers may find in a tourist facility on shore. Passengers of cruise ships do not board in one port and disembark in the next. They follow the entire ship route, which lasts several days, and stay on board

throughout the round trip. Thus, they could not be deprived of the aforementioned services. Furthermore, in its Decision dated 24.03.2010 on the case 37/2010 on the tonnage tax scheme in Cyprus, the Commission explicitly acknowledges, in recital 26 coverage by the tonnage tax of *"all hotel, food service, entertainment and retail trade activities on an eligible vessel, provided that these services are performed as ancillary activities in connection with the maritime passenger transport activities from this vessel and that such services are consumed and used on this vessel"*[25].

3.2.3. Bare-boat chartering out, ship leasing

(61) Whereas the scope of Law 3816/1958 ("Code of Private Maritime Law") is broad by its nature, Law 27/1975, in particular Articles 2[26] and 26[27], narrows the scope to eligible ship-owners engaging in genuine shipping activity. This is indicated by the use of the reference to "profits from the operation of ships".

(62) More generally, the Greek authorities stressed that bare-boat chartering out is not accepted in practice.

(63) The Greek authorities noted that there are no ship-leasing companies in operation in Greece and there is no legal basis for acquiring an ocean-going vessel based on a financial lease agreement. Financial leasing is regulated in Greece by Law 1665/1986. Under Article 1(3) of the Law 1665/1986, financial leasing does not apply to vessels and floating pontoons.

(64) As regards the owners/operators of commercial recreational craft, the Greek authorities admitted that there are no restrictions to charter ships out without a captain and crew[28]. The Greek authorities, however, considered that such transactions should not be treated as traditional chartering out transactions on bare-boat basis, due to the fact that owners of the recreational craft rent their ships out to final users rather than providers of maritime transport services.

(65) In addition, the Greek authorities stressed that only the categories of vessels referred to in Article 5(2) of Law 2743/99, namely sailboats and commercial recreational motor vessels of up to 20 meters total length, may be chartered out without master and crew. In those cases, however, the vessels are commanded by a skipper, who should not necessarily be seafarer/member of the crew and whose qualifications are determined by Ministerial Decision 3342/02/2004[29] (the charterer with the relevant qualifications can play the role of the skipper; otherwise the charterer has to find a skipper).

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25 OJ C144 of 03.06.2010

26 Payment of the tonnage tax shall constitute fulfilment of all liability of the ship-owner and of shareholders or other type of owners (e.g. partners) of any Greek or foreign company in respect of income tax on profits from the operation of ships.

27 The tax [tonnage tax] levied under the terms of this Law shall constitute fulfilment of all liability of the foreign company owning a vessel flying a foreign flag that is operated or managed by a Greek or foreign company established in Greece under Article 25 of this Law for any tax.

28 See *inter alia* Article 3(7) of Law 2743/1999.

29 Ministerial Decision No 3342/02/2004/21.1.2004 (Government Gazette Series II, No 478), as amended by Ministerial Decision No 3342/13/2004/20.8.2004 (Government Gazette Series II, No 1330).

3.2.4. *Absence of flag-link requirement and vessels involved in international transportation*

(66) As regards the tax treatment of non-EEA flagged vessels, the Greek authorities underline that the fact that they are subject to a tonnage tax equivalent to the tax imposed on EEA-flagged vessels, enables a company established in Greece to undertake the management of third-country-flagged vessels (primarily Greek-controlled vessels, which belong therefore to Union-based ship owners and serve Union-based interests).

(67) The Greek authorities also stressed that in the past the Commission approved tonnage tax schemes with no EU flag link requirement, including the French tonnage tax scheme (case N 737/2002) and the German tonnage tax scheme (case N 396/1998).

(68) In any case the Greek authorities point out the high share of EEA-flagged tonnage that is managed from Greece in terms of gross tonnage (47.7% in 2013) and the positive trend of the relevant indicator[30].

3.2.5. *Tonnage tax rebates*

(69) The Greek authorities stress that Article 7 of Law 27/1975, which provides for tonnage tax rebates for A class vessels, is a constitutionally protected provision.

(70) At the same time, the Greek authorities claim that tax reductions and exemptions granted for ship repairs in Greek shipyards have been abolished. In fact, according to Ministry of Finance circular 1133991/31.12.1992 POL 1298, tax exemptions for ship repairs now only apply in the following cases:

(a) where repairs are carried out in factories or workshops which do not qualify as shipyards;

(b) where repairs are carried out under self-supervision outside a shipyard and

(c) where repairs are carried out in any port of an EU Member State, subject to (a) and (b) above.

3.2.6. *Tax treatment of capital gains from the sale of ships acquired before the entry into the tonnage taxation*

(71) The Greek authorities note that currently there are no ships acquired before the beneficiary entered the tonnage tax scheme and therefore the question of exemption from tax on capital gains from the sale of such ships does not arise. Furthermore, as regards the beneficiaries exempted from capital gains tax on the sale of ships, this only applies to genuine shipping entities and therefore they should be exempted. It should be noted that Greek tax legislation (Article 10(3) of Presidential Decree 299/2003) makes no provision for depreciation of ships and other craft of over 500 tonnes.

[30] 46.8% in 2011.

3.2.7. Ring-fencing rules and sanctions

(72) As regards the provision in Article 2(3) of Law 27/1975 on the allocation of profits eligible for tonnage tax on the basis of the ratio of gross income derived from the ship and total gross income, the Greek authorities explain that it was included in the law for situations that applied when it was introduced. It is now standard practice of ship-owning companies to maintain fully separate accounts for eligible shipping activities and other activities by creating separate legal entities for each activity.

(73) The above profit allocation rule on the basis of pro rata gross income was not a rule that necessarily applied in every instance. This is clearly implied in Ministry of Finance circular 32/1975, which states that no allocation is necessary if the company's net profit or loss from operating the ship can be clearly read from the accounts.

(74) In general, the Greek authorities consider that Greek legislation provides robust and sufficient ring-fencing measures to prevent spill-over effects for non-eligible activities.

(75) Firstly, the Greek tonnage tax scheme does not allow beneficiaries to opt between tonnage tax or general corporate tax: the tonnage tax is mandatory, provided that the necessary conditions are fulfilled. Furthermore, there is no set period of time after which beneficiaries can switch from the scheme to general corporate tax. Beneficiaries who fulfil the conditions and enter the tonnage tax scheme must pay that tax for as long as the conditions in question are fulfilled. Furthermore, beneficiaries cannot choose between different taxation systems for different ships of their fleet depending on profitability of a vessel. If the ships qualify for the scheme, tonnage tax should be applied to all of them.

(76) Furthermore, Greek legislation contains strict rules governing the arm's length principle in transactions between affiliated companies. These rules are set out in Articles 39 and 39^{A} of Law 2238/1994, for the purpose of dealing with such transactions from the point of view of income tax, and in Article 26 of Law 3728/2008 for the purpose of dealing with such transactions from a market legislation perspective.

(77) Strict sanctions apply if the above legislation is infringed[31].

(78) Furthermore, the Ministry of Finance circular 32/1975 expressly states in Chapter I, paragraph 6 that any losses from operating Greek flagged ships cannot be offset against the ship-owner's or ship-owning company's net profits from other activities.

(79) If a management company within the meaning of Article 25 of Law 27/1975 infringes any term of its Greek establishment licence, the ministers who issued the

[31] A fine of 10% of the value of transaction is imposed for transactions for which no substantiation file was submitted for inspection, an additional fine of EUR 5 000 is imposed for infringement of the arm's length principle, criminal sanctions are imposed, the undertaking's net profits are increased by the difference in profits established where transactions are corrected, a fine of 20% of the aforementioned additional net profits is imposed and, if an inaccurate return is filed, income tax on the additional net profits is increased by 2% per month (from the date on which the income tax return in question was filed to the assessment date), capped at 120%.

licence may adopt a joint decision withdrawing it, in which case the tax exemption is withdrawn from the company from the date of the infringement and the bond issued for the benefit of the State is forfeited.

3.2.8. Aid ceiling/cumulation

(80) The Greek authorities note that the Commission has not cited any information that proves that ceiling has been exceeded.

(81) In any case, there is no reduction to zero of taxation and social contributions for seafarers and of corporate taxation of maritime activities under the Greek system. Besides, the taxation for seafarers as natural persons more than doubled in Greece recently. Also tonnage tax rates increased and the linked voluntary crisis contribution by the shipping sector.

3.3. Comments of the Greek authorities on preferential tax treatment of maritime cluster intermediaries and shareholders of shipping companies

3.3.1. Exemption from corporate income taxation of maritime cluster companies other than full-fledged shipping companies and ship-managers

(82) As described above, offices or branches of companies established in Greece pursuant to Article 25 of Law 27/1975 and engaged exclusively in the freightage, insurance, damage adjustment, brokerage of sales transactions or of shipbuilding or of freightage or of insurance for ships involved in international transportation are exempted from the payment of income tax act. Instead, those companies are subject to a special tax based on the amount of funds imported from abroad for operation of the relevant offices.

(83) The Greek authorities stressed that tax incentives were provided to the above maritime cluster intermediaries in order to boost Greek and hence European shipping in general.

(84) The Greek authorities stressed that such intermediary companies are required to cover the annual operating expenses of the Greek office through imported funds, as the office provides services on behalf of the parent company and obtains no own revenue from its operation. Therefore it is justified to tax those companies on the basis of the amount of imported funds (foreign currency or euro) meaning taxation based on the annual operating expenses incurred in Greece (within the meaning of "cost-plus" system).

In addition the Greek authorities provided the following comments as regards application of the preferential tax treatment to freighters and insurance intermediaries.

3.3.1.1. Freighters/commercial operators of ships

(85) The Greek authorities stress that companies involved in freightage, i.e. companies specialised in commercial operation of ships are different from traditional shipping companies exploiting/managing ships[32]. Therefore it is more appropriate to apply

[32] In Greece, the concept of ship management usually includes the totality of the following activities, which are fundamental and are exercised in parallel with genuine shipping activities: (a) technical

to such companies a taxation regime different from tonnage taxation. The Greek authorities do not consider that any limitations on the relevant activity would be appropriate. The freighter, as the vessels' commercial operator, sees to the carrying out of all necessary acts that will lead to the chartering of the vessel, over which it maintains effective control.

(86) The Greek authorities consider that freighter activities do not lie within the tonnage tax system and are not related to the Maritime Guidelines but to overall maritime cluster development.

(87) Given the freedom to conclude contracts and especially due to the particularities of tramp trade[33], in which the vast majority of the Greek-owned fleet is involved, no records on the number and other details of voyage/time charter parties are kept by any public authority.

3.3.1.2. Insurers and other intermediary companies

(88) According to the Greek authorities, normally, only insurance brokers fall under the scope of Article 25 of Law 27/1975. As to protection and Indemnity Clubs (P&I)[34], they have insignificant cash flows from and to Greece and are normally not established in the form of the office or branch within the meaning of Article 25 of Law 27/1975 and are subject to the normal rules on corporate tax. Very few representative offices established under Article 25 of Law 27/1975 operate as facilitators between the foreign P&I Club and the customer/ship owner. They collect the ship owner's contribution on behalf of the P&I Club, but do not provide any insurance coverage.

(89) Where activities are performed which fall within the scope of Legislative Decrees 400/71 and 551/70 and Presidential Decree 190/2006 (on private insurance companies), as currently in force, and of Directive 2002/92/EC[35], the insurer has to obtain an operating authorisation as provided for in the above legislation. The Greek authorities thus stress that no maritime-related tax legislation applies to genuine insurance service providers.

3.3.2. Exemption from taxation of dividends and capital gains and from inheritance tax at the level of shareholders of ship-owning and ship-management companies

(90) […]*

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management of the vessel; (b) crew administration/employment; (c) seeing to the vessel's insurance coverage; (d) ensuring of the necessary financing for the exercise of the shipping activities and (e) commercial management.

* confidential information

33 A ship engaged in the tramp trade is one which does not have a fixed schedule or published ports of call.

34 Mutual insurance entities in the maritime sector.

35 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, OJ L 9, 15.1.2003, p. 3–10.

(91) […]

(92) Dividends are income which comes from operating the ship and should therefore not be taxed. Given that exempt distributed profits come from the operation of ships, as expressly provided for under Law 27/1975, the nature of such sums (from the operation of ships) cannot be changed when they are paid to shareholders.

(93) In addition, the level of the tonnage tax imposed in Greece is particularly significant (it maybe twice as high as the average tonnage tax imposed in other European countries) which justifies exemption of dividends' taxation.

(94) […]

(95) The exemption from capital gains from the sale of a qualifying ship needs to be applied *mutatis mutandis*. As the exemption from tax on capital gains arising from the sale of assets covered by the tonnage tax (i.e. the qualifying ship) has been allowed, the exemption from tax on sales of other assets (shares in the ship-owning company), which are also covered by the tonnage tax, should likewise be allowed.

(96) As regards the inheritance tax exemption on transfers of vessels, stocks or shares of Greek or foreign companies that own vessels flying a Greek or foreign flag with gross registered tonnage of over 1 500 and of stocks or shares of holding companies that hold stocks or shares of the aforementioned ship-owning companies, whether directly or through holding companies', the Greek authorities do not consider that the exemption from inheritance taxation distorts competition on the relevant market, as the relevant benefit is not directly connected with the operation of ships.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

(97) 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 provision of certain goods shall, in so far as it* affects *trade between Member States, be incompatible with the internal market"*.

(98) Accordingly, for a support measure to be considered State aid within the meaning of Article 107(1) TFEU, it must cumulatively fulfil all of the following conditions:

a) it must be granted by the State or through State resources, and it must also be imputable to the State,
b) it must confer a selective advantage by favouring certain undertakings or the production of certain goods,
c) it must distort or threaten to distort competition, and
d) it must affect trade between Member States.

4.1.1. State resources and imputability

(99) The Commission notes that

a) the tonnage tax scheme for ship-owning/ship-management companies,

b) the exemption from taxation of capital gains from the sale of tonnage taxed ships,
c) the special taxation scheme for maritime cluster companies,
d) the exemption from taxation of dividends and capital gains in shipping and related companies,
e) the exemption from inheritance tax laid down in Law 27/1975

(hereinafter collectively referred to as "the national measures at hand") concern exemptions from usual taxes normally payable to the Greek State, and thus State resources are foregone. Moreover, the national measures at hand have been put into effect in the form of State regulation (e.g. Parliament Laws, Decrees, etc.) and they are therefore imputable to the State.

4.1.2. Selective economic advantage

(100) The Commission notes that the national measures at hand are not available to all sectors/undertakings and therefore are selective. They enable their beneficiaries to save on their tax expenses.

(101) The Commission notes that the Greek authorities suggest that maritime cluster companies exempted from the usual income taxation rules are normally offices of foreign companies that hardly earn revenues of their own and therefore are taxed on the basis of the "cost-plus" method. However, the taxation of imported funds of such maritime cluster companies is only a temporary tax imposed on them for a period of eight years. The permanent fiscal situation of such maritime cluster companies, which is also the object of the present decision, is that those companies are fully exempted from payment of taxes. This is clearly an advantage compared to the situation whereby the revenues (however minimal) of such companies would be taxed according to the general framework in Greece. The existence of a *temporary* tax for eight years on the imported funds of such companies is a measure separate and unconnected to the *permanent* fiscal exemption of such companies under Article 25 of Law 27/1975.[36]

(102) Moreover, the Greek authorities argue in general with respect to the scheme under examination that the Greek shipping sector is subject to certain measures that are more onerous than in other Member States. However, it is settled case-law[37] that if the beneficiary of a measure suffers from a burden due to a separate and unconnected measure, that burdensome measure cannot be set-off against the beneficial measure in order to obtain zero "net advantage". Furthermore, the argument of the Greek authorities that submission to tonnage tax is mandatory, does not alter the fact that in principle tonnage taxation results in a tax burden that is much lighter than if the general rules on taxation of revenues were applied.

(103) In view of the above, the Commission concludes that the national measures at hand confer a selective economic advantage.

4.1.3. Distortion of competition and trade

(104) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient

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[36] See in that regard also: Case C-81/10 P *France Télécom v Commission* EU:C:2011:811, paras 44-51; Joined cases T-427/04 and T-17/05 *France v Commission* EU:T:2009:474, paras 208-218.

[37] *Ibid*.

compared to other undertakings with which it competes.[38] For all practical purposes, a distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.[39] Where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid.[40]

(105) Shipping activities are essentially carried out on a worldwide market. In addition, the markets for both maritime cabotage routes and maritime services are fully liberalised.[41] The services provided by tugboats and dredgers, as well as the services provided by broader maritime cluster companies are also liberalised. Thus, services provided by shipping and broader maritime cluster companies benefiting from the national measures at hand are open to competition within Member States, between Member States and between Member States and third countries. Other activities covered by the measures described, including fishing[42], oil extraction, and different maritime intermediary services are also clearly subject to competition at the EU level and beyond. The position of beneficiaries of the national measures at hand is strengthened by virtue of those measures, as compared with other undertakings competing in intra-Community trade.

(106) With respect to the argument by the Greek authorities that the inheritance tax exemption does not distort competition, the Commission notes that the beneficiaries are active in liberalised economic activities, in particular in maritime transport, broader maritime activities described in the preceding recital and/or investing in companies exercising such activities. Therefore, those beneficiaries also operate in liberalised markets and their competitive position is strengthened by the national measures at hand. The potential magnitude of the distortion of competition and effect on trade becomes even clearer when considering that those beneficiaries typically invest in companies operating vessels above 1 500 tonnes. Furthermore, shipping businesses in Greece are often family businesses, and thus there is no clear boarder-line between shipping companies and their shareholders.

(107) Consequently, the national measures at hand threaten to distort competition and could affect trade between Member States.

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38 Case 730/79 *Phillip Morris* [1980] ECR 267, para. 11; Joined cases T-298/07, T-312/97 etc. *Alzetta* [2000] ECR II-2325, para. 80.

39 Joined Cases T-298/07, T-312/97 etc. *Alzetta* [2000] ECR II-2325, paras 141-147; Case C-280/00 *Altmark Trans* [2003] ECR I-7747.

40 Case T-288/07 *Friulia Venezia Giulia* [2001] ECR II-1619, para. 41.

41 As from 1 January 1993: Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364 of 12.12.1992, p. 7; Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31.12.1986, p. 1.

42 The fact that the fisheries sector is subject to competition at EU level is confirmed *inter alia* by the Commission's Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1–15.

4.1.4. Conclusion

(108) In view of the above, the Commission considers that the national measures at hand constitute State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the aid

4.2.1. Tonnage tax and exemption of capital gains taxation from transactions involving tonnage taxed ships

4.2.1.1. Preliminary remark

(109) The Greek authorities argue in general that the Commission should apply directly Article 107(3)(c) TFEU, in order to take a broader view that would not be limited to the observance of the criteria of the Maritime Guidelines. However, in accordance with settled case-law, in the application of Article 107(3) TFEU the Commission enjoys wide discretion, the exercise of which involves complex economic and social assessments which must be made in a Community context. In adopting rules of conduct and announcing by publishing them that they will apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and cannot depart from those rules under pain of being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations. Therefore, in the specific area of State aid, the Commission is bound by the Guidelines and notices that it issues, to the extent that they do not depart from the rules in the Treaty.[43] In accordance with that settled case-law, the Commission will apply the Maritime Guidelines in the present case.

4.2.1.2. Eligibility of vessels covered by the Greek tonnage tax regime

(110) In accordance with section 2 of the Maritime Guidelines their scope covers only 'maritime transport' defined as the transport of goods and persons by sea between ports, as well as between a port and an off-shore installation/structure[44].

[43] See *inter alia* Case C-464/09 P *Holland Malt v Commission* EU:C:2010:733, paras 46-47.

[44] The Maritime Guidelines explicitly refer to the definition of maritime transport given by Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1) and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

(111) It follows that in order to comply with the Maritime Guidelines, national aid measures must in principle be limited to ships used for the purpose of maritime transport as defined therein. This includes also dredging and towing vessels provided that they are used in more than 50% of their operational time in maritime transport operations. In addition, the Commission has decided 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 maintaining activities (e.g. cable-laying, pipe-laying, research and crane vessels) or vessels providing rescue at sea and marine assistance on the high seas[45], provided they require similarly qualified staff and are similarly exposed to international competition.[46] Greece has confirmed the opinion expressed by the Commission in its Article 21 letter that *de jure*[47] largely all vessels fall within the scope of Law 27/1975 and that all types of vessels, except for non-self-propelled pontoons, are eligible for the tonnage tax scheme.

(a) Eligibility of fishing vessels

(112) The Commission considers that the primary purpose of fishing vessels is not the transport of goods and persons by sea between ports or between a port and an off-shore installation/structure, as required by the scope of the Maritime Guidelines.

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45 See for example: Commission Decision of 13 January 2009 on State aid C 22/2007 – Denmark – Extension of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers to dredging and cable-laying activities OJ L 119, 15.5.2009, p. 23; Commission decision of 27 April 2010 on State aid N 714/2009 – The Netherlands – Extension of the tonnage tax scheme to cable layers, pipeline layers, research vessels and crane vessels, OJ C 158, 18.6.2010, p. 2.; Commission decision of 13 April 2015 on State aid SA.38085 (2013/N) concerning prolongation of the Italian tonnage tax scheme (including its application to vessels providing rescue at sea and marine assistance on the high seas).

46 When assessing whether new vessel types can benefit from tonnage tax, the Commission considers whether there is a risk that the companies operating relevant service vessels could relocate their on-shore activities outside the EU for the purpose of finding more accommodating fiscal climates and subsequently re-flag those vessels under flags of third countries. In principle, those companies 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. The activities of service vessels are subject to the same legal environment as EU maritime transport in the fields of labour protection, technical requirements and safety. Their activities often require qualified and trained seafarers, with similar qualifications as those working on board traditional maritime transport vessels. Seafarers on board service vessels are governed by the same labour law and social framework as other seafarers. Service vessels are sea-going vessels and they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.

47 *De facto*, based on the statistical information provided by the Greek authorities the Commission notes that currently only the following types of vessels benefit from the Greek tonnage taxation scheme: tankers, bulk carriers, LNG carriers, car ferries, ro-ro vessels, dry cargo barges, passengers transportation vessels (including small tourist vessels), tugboats and fishing vessels.

(113) In addition, the State aid rules applicable in fisheries and aquaculture sector[48] do not provide for a possibility to cover fishing vessels by the tonnage tax system. Indeed, they clearly state that operating aid in fisheries' sector is in principle incompatible with the internal market, unless exceptions are expressly provided for in Union legislation[49].

(114) Tax relief measures concerning corporate tax were allowed only under the previous (2008) Guidelines for the examination of State aid to fisheries and aquaculture[50] but only in a very specific context, notably vessels flying the flag of a Member State and registered in the Community fishing fleet register and fishing for tuna-like species exclusively outside Community waters.

(115) Furthermore, the Greek authorities state that the majority of fishing vessels exercise local activities, which do not venture on to the high seas. This is in clear contrast with the *rationale* behind the Maritime Guidelines: the risk that maritime transport companies, operating in global markets, relocate their activities outside the EU to find more accommodating fiscal and regulatory climates and subsequently re-flag their vessels under flags of third countries.

(116) Therefore the Commission concludes that the inclusion of fishing vessels in the tonnage tax scheme is not compatible with the internal market.

(b) Eligibility of towage and dredging vessels

(117) The Commission considers that the limitations contained in the Maritime Guidelines, including the requirements concerning predominant use of a vessel in maritime transport activities and EEA flagging, have not been transposed into the Greek legislation.

(118) As regards dredgers, so far this has had no practical effect as no dredgers are currently operating under the Greek tonnage tax, but the applicable rules still need to be changed for the future. According to Maritime Guidelines "*fiscal arrangements for companies (such as tonnage tax) may be applied to those dredgers whose activity consists in 'maritime transport' for more than 50% of their annual operational time and only in respect of such transport activities"*. In the case of dredging, maritime transport is defined by Section 3.1 of the Maritime Guidelines as "*the transport at deep sea of extracted materials"* and excludes *"extractions or dredging as such"*. In line with the Commission's decision-making practice[51], the eligible part of the dredger's activities includes sailing between the port and the extraction site, sailing between different places of

[48] Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37–63; Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1–15.

[49] See for instance §50 of the Guidelines for the examination of State aid to the fishery and aquaculture sector.

[50] Official Journal C 84, 3.4.2008. See section 4.5 of the Guidelines.

[51] See in particular Commission decision extending the scope of the Danish tonnage tax case C22/2007, OJ, L119 of 14.05.2009, recitals 79-80.

extraction, sailing between the place of extraction and the place where the extracted materials are to be unloaded, unloading of extracted material, sailing between the place of unloading and the port. By contrast, dredging and sailing while dredging is not considered as maritime transport activity.

(119) As to tugboats, the Maritime Guidelines clearly indicate that *"towage activities which are carried out inter alia in ports, or assisting a self-propelled vessel to reach port does not constitute maritime transport"*. In addition, the Maritime Guidelines foresee that towage is covered by their scope only if more than 50% of the towage activity effectively carried out by a tug during a given year constitutes maritime transport (this would *inter alia* include towing barges between ports or between a port and an off-shore installation/structure or towing of vessels which due to a technical failure cannot sail on their own[52]). In view of this precise wording of the Maritime Guidelines, the fact that towing is sometimes initiated 7-8 nautical miles outside the borders of a port[53], or even more miles[54], is not relevant for the state aid compatibility assessment as long as the tugboat assists a self-propelled vessel to reach port in a context which is not related to the technical failure of the tugged vessel. Similarly, the fact that the licence granted to tugboats covers the performance of towing services throughout the Greek territory and not in a specific port area is not relevant. As stated by the Greek authorities, 99% of tugboat activities concern vessels calling at ports for loading and unloading and assisted by tugboats and pilots to go through channels difficult to pass, from the berth or the pilot station to the docks of the main ports.

(120) Therefore the Commission concludes that the current provisions of the Greek legislation on dredgers and tugboats do not comply with the Maritime Guidelines (Chapter 3.1) as regards rules on tugboats and dredgers.

(c) Eligibility of floating rigs / floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas

(121) After having examined the comments of the Greek authorities, the Commission re-iterates the position expressed in its opening decision in the Belgian tonnage tax case (C20/2003)[55], notably that the Maritime Guidelines do not cover exploitation of natural resources at sea[56].

(122) Therefore, the Commission concludes that coverage by the tonnage tax scheme of floating rigs / floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas is not in line with the Maritime Guidelines.

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52 Indeed, in a situation of a technical failure, the ship itself becomes a good to be transported.

53 See submission of the Greek authorities of 27.06.2013.

54 Up to 15-16 nautical miles, as stated by the Greek authorities during the 19.12.2013 meeting.

55 Decision of 19.03.2003, OJ C 145, 21.6.2003.

56 See §§65-72 of the Decision.

4.2.1.3. Eligibility of ancillary revenues from ships of tonnage tax beneficiaries

(123) The Greek legal acts do not provide any precise guidance as to interpretation of "profits from the operation of ships".

(124) Based on the information received from the Greek authorities, all revenues from passenger ships are subject to tonnage taxation. As to freight transportation, it seems no clear guidance exists on the tax treatment of multimodal services sold in one package.

(125) In the Cypriot tonnage tax decision (N37/2010) the Commission considered that in relation to the carriage of passengers by sea, also *"all hotel, catering, entertainment and retailing* activities *on board of a qualifying ship"* are eligible, "*provided that these services are performed as ancillary* activities *to the* activity *of carriage of passengers by sea by that ship and are all consumed or used on board that ship"*. In the UK tonnage tax decision (N790/99[57]), the Commission considered as eligible also services or facilities offered, which are additional to the core activities, but which are part of the total package offered to customers, provided that these would be unlikely to yield a profit if the normal tax rules were applied. The Commission in the Belgian tonnage tax case (C20/2003[58]) prohibited revenues from gambling and casinos, luxury goods[59], as well as revenue from land-based excursions[60] from the tonnage taxation.

(126) In view of the above mentioned decision practice and recognising that it would be counterproductive to establish a definite list of services which may be covered by tonnage taxation as ancillary services, the Commission considers that some limitations are necessary to ensure that beneficiaries of tonnage taxation remain genuine maritime transportation service providers. The principle is that revenues from eligible ships should mainly be constituted by the core shipping revenues.

(127) 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. Ancillary revenues are other types of revenues which are frequently provided on-board maritime transport (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 would be the rental of advertising billboards on-board; the sale of goods and the provision of services customarily offered on passenger ships, including spa, hairdresser services, gambling and other entertainment services; the renting out of ship premises to shop and services' operators, the intermediation in provision of local excursions, etc. The Commission considers that core revenues should always cover more than 50% of the vessel's total (core and ancillary) gross revenues.

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[57] OJ C 258 of 9.09.2000.

[58] OJ L 150 of 10.06.2005.

[59] Except for alcohol tobacco and perfumes.

[60] Bought-in services.

(128) In the same vein, distortions of competition with land-based services should be limited. This *inter alia* requires that e.g. land-based services, such as local excursions or road part transportation included in the overall service package, should be bought-in either from unrelated companies or at arm's length price from the same group's entities, which are subject to usual income taxation.

(129) Similarly, the conclusion of contracts non-customary for maritime transport sector, such as acquisition of cars, livestock, property, should not be covered by tonnage taxation. Such revenues are entirely unrelated to maritime transport and thus should never be eligible for tonnage taxation, neither as core nor as ancillary revenues.

(130) As the Greek legislation does not provide guarantees that ancillary revenues could be accepted under tonnage taxation only for genuine shipping companies and that possible distortions of competition with land-based services would be prevented, the relevant provisions of the Greek legislation are considered incompatible with the internal market.

4.2.1.4. Eligibility of revenues from bare-boat chartering out

(131) The Commission considers that, although bare-boat chartering out is a legitimate economic activity, as a general rule, it should not be eligible to preferential tax treatment. In previous decisions[61], the Commission considered that pure ship lessors cannot be deemed to provide maritime transport services and, consequently, should not benefit from a tonnage tax regime.[62]

(132) The Commission considers that the above principle should apply not only for bare-boat chartering out contracts concluded with shipping companies, but also with final users in the sector of recreational vessels. The treatment of bare-boat chartering out should not vary depending on the type of the charterer, since the key requirement under the Maritime Guidelines is that the beneficiary provides maritime transport services as defined in the relevant Council regulations.

(133) However, the situation is different in the context of *intra-group* contracts. In principle, intra-group bare-boat chartering out transactions can be compatible[63] under the Maritime Guidelines, since the beneficiary as a group performs the activity of maritime transport but through an intra-group leasing structure. Whether the beneficiary of tonnage taxation wishes to have: (i) one legal entity that does both maritime transport and owns the vessel, or (ii) two legal entities, one performing maritime transport and another one owning the vessel and leasing it to the former (e.g. for financing reasons) should, as a rule, not make any difference for the purpose of the Maritime Guidelines. In this respect, the Commission notes that intra-group bare-boat chartering out transactions were

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[61] See in particular the Commission decision in the Spanish tax lease case SA.21233, OJ L 114 of 16.04.2014; the Finnish tonnage tax case N448/2010, OJ C 220 of 25.07.2012, and the Maltese tonnage tax case SA.33829 (2012/C), OJ C 289 of 25.09.2012.

[62] This approach is also consistent with the OECD model tax convention which states that *"profits from leasing a ship on a bare-boat charter basis except when it is an ancillary activity of an enterprise engaged in the international operation of ships are not shipping profits"*.

[63] Irrespective of the conditions of the immediately following recital.

unconditionally accepted in the Irish tonnage tax decision (N504/02[64]) and the French tonnage tax decision (N737/02[65]).

(134) Apart from intra-group transactions, the Commission can accept a certain flexibility in favour of genuine shipping companies and assimilated companies[66] provided all of the following conditions are fulfilled:[67]

a) bare-boat chartering out activities must be related to temporary excess capacity for a period of up to 3 years;

b) temporary excess capacity must be related to the beneficiary shipping company's own shipping services, i.e. excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation; and

c) the proportion of bare-boat chartered-out capacity should not exceed a maximum percentage of the shipping company's fleet under the tonnage tax scheme, which can reach at most 50%. Indeed, the Commission considers that, if more than 50% of the fleet of the tonnage tax beneficiary is bare-boat chartered out, such activity would not be classified as "ancillary activity". On the other hand, a lower maximum threshold would not be appropriate, as it could discriminate against small operators.

(135) While the Greek authorities stated that in most cases bare-boat chartering out is not permitted in Greece (except for recreational vessels), the applicable legislation does not provide sufficiently clear rules in this respect and therefore may lead to aid which is incompatible with the internal market.

(136) Furthermore, the Greek authorities claimed that there is no legal basis for acquiring an ocean-going vessel based on a financial lease agreement under Greek law. Law 1665/1986 regulates financial leasing contracts[68] (συμβάσεις χρηματοδοτικής μίσθωσης) and its scope does not cover vessels and floating pontoons, except for recreational vessels.[69] However, this does not mean that vessels cannot be the object of a leasing contract (σύμβαση μίσθωσης) or other similar contracts under the general rules of Greek legislation, such as the Greek Civil Code.[70] Therefore, there is a need to align Greek legislation on tonnage taxation of leased vessels with EU State aid rules.

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64 OJ C 15 of 22.01.2003.

65 OJ C 38 of 12.02.2004.

66 E.g. companies operating cable laying, pipe-laying, crane and research vessels, as well as vessels providing rescue at sea and marine assistance on the high seas.

67 See *inter alia* Commission decisions in the Finnish tonnage tax case N448/2010 and the Croatian tonnage tax case SA.37912.

68 For example, in terms of default or mandatory terms that such contracts should include and in terms of their fiscal treatment.

69 Article 1(3) of Law 1665/1986.

70 Besides, the explanatory report (εισηγητική έκθεση) of the Committee responsible for the drafting of the Private Maritime Law Code (Συντακτική Επιτροπή του Σχεδίου Κώδικος Ιδιωτικού Ναυτικού Δικαίου) mentions the possibility of leasing of vessels, when stating with respect to the sixth chapter of the Code that the Committee preferred not to set specific types of contracts for the leasing of vessels alone (*locatio conductio navis*) or of vessels with crew (*locatio conductio navis et operarum, magistri*

4.2.1.5. Exemption from taxation of capital gains from sale of tonnage taxed ships

(137) In case of genuine shipping companies, the Commission has systematically accepted exemptions from taxation of capital gains stemming from eligible ships both acquired and sold while under the tonnage taxation scheme[71].

(138) As to the ships acquired *before* the beneficiary's entry into the tonnage tax regime, a reduction or exemption from the capital gains taxation would constitute a separate State aid measure and would be acceptable only within the limits of the aid ceiling fixed in the Maritime Guidelines[72]. This means that in case of ships bought *before* the entry into the tonnage tax scheme, the hidden tax liabilities have to be settled upon the entry into the tonnage tax scheme, unless they can be accommodated within the aid ceiling over 10 years' period. Such hidden tax liabilities would normally have to be determined as the difference between the market value and the tax value of the ship at the moment of entry into the tonnage taxation system.

(139) The Greek authorities claim that this is only a theoretical possibility, since there are currently no ships that were acquired *before* the beneficiary entered the tonnage tax scheme. Therefore the question of exemption from tax on capital gains from the sale of such ships does not arise.

(140) The Commission, however, notes that the question of possible switch from the usual income taxation system to tonnage tax system is not purely theoretical. The Commission is aware that there are/have been operators of ships in Greece which are/have been subject to the usual norms on taxation of revenue. These were operators of foreign-flagged ships, if they were involved in coastal passenger services or provided other commercial services on domestic routes or if they operated vessels below 500 tonnes, since ships of those two categories were not eligible for tonnage taxation before 2015. Given that the recently adopted law 4336/2015 recognised the right of non-Greek EEA flagged ships involved in domestic transportation (irrespective of tonnage) and involved in international transportation (up to gross tonnage of 500 tonnes) to benefit from the tonnage tax, it is expected there will be transfers from the corporate income taxation system to tonnage tax system. At least in theory, transfers from income taxation to tonnage taxation are also possible for small non-EEA (up to gross tonnage of 500 tonnes) ships which subsequently are re-flagged in an EEA Member State.

(141) Therefore, the Commission concludes that unconditional exemption from taxation of capital gains from sale of ships is not compatible with the internal market as it may:

- lead to exceeding the aid ceiling stipulated in Chapter 11 of the Maritime Guidelines in case of ships of beneficiaries that could be eligible for tonnage

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et nauiticorum), because such contracts exhibit a high degree of variation in practice and the parties to the contract would be better suited to agree themselves the terms that are appropriate.

[71] Recently this approach was confirmed in the Commission decisions in cases SA.38085 and SA.37912 concerning Italian and Croatian tonnage tax cases respectively.

[72] See e.g. the Commission decision in case N448/2010 –Amendments to the Finnish tonnage tax system, (http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N448_2010).

taxation under the Maritime Guidelines, i.e. mainly genuine shipping companies; or

- provide an unjustified advantage for owners on non-eligible ships, such as fishing vessels or recreational vessels chartered out on a bare-boat basis.

4.2.1.6. The level of tonnage tax

(142) A comparison of the level of tonnage tax in Greece with that in other Member States is not easy for several reasons. Firstly, Greece uses Gross Tonnage (GT) as a reference while other Member States use Net Tonnage (NT)[73] and the conversion between the two metric systems is different and done on a case by case basis for each vessel[74]. Secondly, Greece charges an annual tonnage tax rate in the form of a lump sum, whereas most other Member States[75] establish a notional profit[76] fixed either per calendar day or per day of operation for each ship per 100 tonnes to which the corporate tax is then applied. The Commission accepts the possibility to use different methodologies for calculating the tonnage tax provided that the final tax burden for a given ship does not fall below what has been accepted by the Commission so far.[77]

(143) Still, based on the information provided by the Greek authorities concerning the applicable tonnage tax rates and the calculations carried out by the Commission, it appears that, in general, the tonnage tax rates in Greece are not lower than what was accepted by the Commission so far and therefore meet the relevant requirement of the Maritime Guidelines. This is also the case after deducting the tax rebates provided in:

- Article 7(1)(b) of Law 27/1975 and reducing the tonnage tax rate for Category A ships by 50% for cruise ships and for all ships engaged in international voyages

- Article 12(2) of Law 27/1975 and reducing tonnage tax rate for Category B ships by 50% for all ships engaged in international voyages; (ii) by 60% for passenger ships, whether engine driven or sail-propelled.

(144) The comparison was done taking into account what the Commission approved in its previous tonnage tax decisions. For 13 Member States, the Commission used

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[73] Both NT and GT are obtained by measuring ship's volume and then applying a mathematical formula. Net tonnage is based on "the moulded volume of all cargo spaces of the ship" while gross tonnage is based on "the moulded volume of all *enclosed* spaces of the ship". In addition, a ship's net tonnage is constrained to be no less than 30% of her gross tonnage. Gross tonnage and net tonnage, were defined by the International Convention on Tonnage Measurement of Ships, 1969, adopted by the International Maritime Organization in 1969; it came into force on July 18, 1982.

[74] For example, a sample cargo vessel has 20 000 GT and 18 000 NT, whereas a sample container ship has 91 921 GT and 53 625 NT. A sample ore carrier has 159 534 GT and 63 935 NT.

[75] Except for Cyprus, Malta and Croatia.

[76] The notional profit is not the actual profit made from the operation of the ship but it is calculated on the basis of a scale of rates depending on the tonnage of each ship.

[77] 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".

in its assessment the tonnage tax base approved in its decisions[78] and the applicable national corporate income tax rates[79].

Tonnage		Taxation base under tonnage tax regimes per 100 tonnes per day in euro												
(Net Tonnes)		**NL**	**D**	**DK**	**UK**	**ES**	**IRL**	**FIN**	**F**	**B**	**SL**	**PL**	**LT**	**IT**
1	1.000	0,91	0,92	0,94	0,97	0,9	1	1,38	0,93	0,9	0,9	0,5	0,93	0,9
1.001	10.000	0,67	0,69	0,67	0,73	0,7	0,75	1,03	0,71	0,7	0,67	0,35	0,67	0,7
10.001	25.000	0,46	0,46	0,4	0,48	0,4	0,5	0,69	0,47	0,4	0,4	0,2	0,43	0,4
25.001	40.000	0,23	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,2	0,2	0,1	0,27	0,2
40.001	50.000	0,23	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,05	0,2	0,1	0,27	0,2
50.001	and more	0,05	0,23	0,27	0,24	0,2	0,25	0,57	0,24	0,05	0,2	0,1	0,27	0,2

(145) For Cyprus and Croatia, the Commission took annual tonnage tax rates approved in its decisions[80]:

Annual tax in € per 100 NT					
Tonnage brackets	0-1000 NT	1001-10000 NT	10001-25000 NT	25001-40000 NT	>40000 NT
Cyprus	36,50	31,03	20,08	12,78	7,30
Croatia	35,44	30,19	19,69	12,47	7,22

(146) Based on the calculations carried out it follows that for the A Class ships in the age category corresponding to the average age of the Greek fleet (12.5 years)[81] the tonnage tax level, even after application of 50% rebate specified in Article 7 of Law 27/1975[82] is above the levels accepted in the past by the Commission. Notably, Greece charges per gross tonne at least as much as what Cyprus, Croatia, Ireland and Poland charge per net tonne[83], or even higher. In that respect, it has to be stressed that the difference between gross and net tonnage of ships is always significant and, depending on the ship's category, gross tonnage can be even up to three times higher than net tonnage[84]. Therefore, per net tonne, the tonnage tax in Greece would be well above what the Commission has approved before. Therefore, even if in Greece younger ships (0-4 years) bear approximately 40% lower tonnage tax burden than ships in the 10-19 year category, this would not

[78] Commission decisions in the following tonnage tax cases: N 738/95 as amended by the decision in case N457/2008 (NL) - OJ C/106/2009; N396/1998 (DE) - OJ C/029/1999; N563/2001 (DK) - OJ C/146/2002; N790/99 (UK) - OJ C/258/2000; N736/2001 (ES) OJ C/038/2004; N504/2002 (IRL) OJ C/015/2003; N448/2010 (FI) – OJ C/220/2012; N737/2002 (FR) - OJ C/038/2004; C20/2003 (BE) - OJ C/145/2003 and OJ L/150/2005; N325/2007 (SL) - OJ C/53/2009; C34/2007 (PL) - OJ C/300/2007 and OJ L/90/2010; N330/2005 (LT) - OJ C/90/2007; N45/2004 (IT) - OJ C/125/2005.

[79] See e.g. http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-corporate-tax-rates-2015.pdf

[80] Commission decisions in cases: N37/2010 (CY) OJ C/144/2010 and SA.37912 (HR).

[81] 10-19 years.

[82] Rebate for cruise ships and for all ships engaged in international voyages.

[83] As approved by the Commission.

[84] E.g. a vessel of 160 000 GT can have a net tonnage of just over 60 000 NT.

result in their tonnage tax rate being lower than the levels accepted so far by the Commission for other Member States.

(147) It must also be stressed that in most Member States (including Poland and Ireland) the tonnage tax is charged only per days in operation. While in Greece tonnage tax rebates are possible when a ship is proved to have been out of service in proportion to the number of days during which the ship was out of service, the underlying conditions as spelled out in Article 5 of Law 27/1975 are strict:

- for Class A ships, provided the ship was out of service for more than two consecutive months during the tax year or the year before;
- for Class B ships, provided the ship was out of service for more than 20 consecutive days during the tax year.

(148) Furthermore, it should be noted that Law 4336/2015 foresees 4% annual tonnage tax increase for the years 2016 till 2020 for A class ships.

(149) As general tax rates are higher for B class ships, the relevant condition of the Maritime guideline is equally satisfied, even taking into account rebates of up to 60% specified in Article 12(2) of Law 27/1975.

(150) The Commission, however, considers that a number of tonnage tax rebates provided for in Articles 7 and 13 of Law 27/1975 are of discriminatory nature because they are limited to ships built or repaired in Greece or they are conditional on Greek ownership of the tonnage taxed ships. In addition, they would normally lead to the tonnage tax level falling below what has been generally accepted for other Member States. This is certainly the case as regards full tax exemptions, and may well happen also in case of reductions. Therefore the following tonnage tax rebates are considered incompatible with the Maritime Guidelines and the internal market:

a) exemptions for A Class ships built in Greece and flying the Greek flag until they are 6 years old as well as conditional exemptions for A Class ships undergoing ship repairs in Greece;

b) exemptions for B Class ships built in Greece and flying the Greek flag until they are 12 years old;

c) the 50% reduction for five years for B Class cargo ships, tankers and refrigerator ships between 10 and 20 years of age first placed under the Greek flag (the exemption is increased, subject to certain conditions, to two-thirds reduction for a period of ten years if such ships are repaired in Greece);

d) the conditional two-thirds reduction for a period of ten years for B Class passenger ships which are less than 20 years old if they are repaired in Greece;

e) the two-thirds reduction for a period of five years for B class ships between 10 and 15 years old, provided that they are at least 50% owned by persons with Greek nationality or by companies established in Greece, if this ship replaces a ship more than 20 years old belonging to the same owners and whose GT is at least two-thirds of the tonnage of the ships they have replaced.

(151) As regards reductions related to ship repairs in Greece, the arguments of the Greek authorities[85] that the relevant exemptions have been abolished cannot be

[85] See submission of 5.11.2012.

upheld. First, circular 1133991/31.12.1992 POL 1298 refers only to Article 7 of Law 27/1975 (i.e. repairs of A Class ships), and does not mention Article 13 of Law 27/1975 (i.e. repairs of B Class ships). Second, it is not clear how the provisions of a Law of the Greek Parliament, which according to the Greek authorities are also constitutionally protected (reductions/exemptions for A class ships), could be changed by a simple circular of the Ministry of Finance. In any event, even if the Greek authorities currently apply tonnage taxation in accordance with the circular and disregard Law 27/1975, the relevant provisions of Articles 7 and 13 should be abolished, in order to ensure clarity and consistency in the application of tonnage taxation. Finally, even if no discriminatory elements were present, full tonnage tax exemption, even on a temporary basis, would go against the principles of the Maritime Guidelines.

(152) Thus the Commission concludes that the above-mentioned tax rebates are incompatible with the Maritime Guidelines and the internal market because they are discriminatory and because they result in a taxation level which is below what was accepted by the Commission so far[86].

(153) The above assessment of the Commission does not take into account the Law 4301/2014 ratifying the agreement signed between the Greek Government and the Maritime Community and *inter alia* providing for annual contribution which is equal to the annual tonnage tax paid for every Greek or foreign-flagged ship managed from Greece. This is a *temporary* measure for the period 2014-2017 and it does not amend the *permanent* tonnage tax legislation. The two measures are unconnected to each other[87] and the temporary measure for the period 2014-2017 does not permanently amend the levels of tonnage taxation in Greece. Moreover, the Commission does not object to the level of tonnage tax as such but to the discriminatory reductions and the full exemptions from tonnage tax, which are anyway not affected by the temporary agreement between the Greek Government and the Maritime Community. Furthermore, Article 8(4) of the agreement between the Greek Government and the Maritime Community states that its basis (δικαιοπρακτικό θεμέλιο) is the legal regime on taxation of vessels in force at the time of signature of the agreement. Thus, it is not excluded that an amendment of the Greek tonnage taxation scheme (which is exactly the aim of the present appropriate measures proposed by the Commission) may lead to the invalidity of that agreement. For all those reasons, the temporary agreement between the Greek Government and the Maritime Community is not relevant for the assessment of the tonnage tax rates.

4.2.1.7. The flag link requirement

(154) In the Article 21 letter, the Commission expressed the preliminary view that the flag-link requirements as laid down in the Greek legislation were not entirely meeting the requirements set out in Chapter 3.1 of the Maritime Guidelines. In particular, the Commission was concerned about the fact that ships over 500 gross tonnes (except coastal passenger vessels and commercial vessels plying domestic routes) may benefit from tonnage taxation independently of the flag of the ship on the basis of Article 25 and 26 of Law 27/1975.

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[86] 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".

[87] See also in the same vein recital (101) of the present Decision.

(155) Following the comments received from Greece, the Commission notes the high share of EEA-flagged tonnage[88] that is managed from Greece in terms of gross tonnage and the positive recent trend of the relevant indicator.

(156) However, the Commission considers that the lack of appropriate mechanism in the Greek legislation ensuring compliance with the EEA-flagged tonnage share requirement as regards fleets comprising also vessels flying other flags may lead to incompatibility with the requirements of the Maritime Guidelines. Notably, it may lead to the tonnage tax companies (or groups) failing to respect the requirement to increase or at least maintain the share of EEA-flagged tonnage in their tonnage taxed fleet.

(157) Although the high share of EEA-flagged tonnage managed from Greece shows that *currently* that share happens to be satisfactory in practice, it does not alter the fact that the Greek tonnage tax scheme does not provide sufficient safeguards (as required by the Maritime Guidelines) in order to ensure that the share of EEA-flagged tonnage can remain at satisfactory levels. The Commission considers contrary to the Maritime Guidelines the fact that ships over 500 gross tonnes (except coastal passenger vessels and commercial vessels plying domestic routes) may benefit from tonnage taxation independently of the flag of the ship on the basis of Article 25 and 26 of Law 27/1975. […][89][…][90][…][91].

(158) Based on the above, the Commission notes that now Greece treats other EU-EEA vessels managed from Greece in the same way as Greek-flagged vessels for tonnage tax purposes[92]. The Commission, however, concludes that no appropriate mechanism exists in Greece to ensure that tonnage tax companies or groups having also non-EEA vessels in their fleet increase or maintain the share of EEA tonnage of the fleet. This is incompatible with Chapter 3.1 of the Maritime Guidelines.

4.2.1.8. Ring-fencing measures

(159) As required by Chapter 3.1 of the Maritime Guidelines spill-over effects between eligible and non-eligible activities should be excluded. However, the Commission notes that Article 2(3) of Law 27/1975 still enables beneficiary companies which are also engaged in commercial activities other than operation of the ship, to determine profits from different activities in proportion to the company's gross income derived from relevant activities, rather than detailed accounting of costs and revenues related to different activities. This does not constitute a proper account separation as required by the Maritime Guidelines.

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88 47.7% in 2013, which according to the Commission's estimates should be above the EU average.

89 […]

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91 […]

92 This follows infringement procedure brought by the Commission against Greece as regards non Greek EEA vessels involved in domestic transportation or with tonnage below 500GT, based on Treaty rules on establishment, free movement of capital and provision of services (case IN/2012/4155)

(160) Even though circular 32/1975 of the Ministry of Finance, which states that no pro-rata allocation of profits is necessary if the company's net profit or loss from operating the ship can be clearly read from the accounts, this does not provide the necessary legal safeguards. The Commission considers that tonnage taxed companies will still use the clause provided in Article 2(3) of Law 27/1975 when it will be in their favour.

(161) Thus, the Commission concludes that the Greek legislation does not ensure correct transposition of the account separation requirement of the Maritime Guidelines. In addition, ring fencing measures cannot be considered complete while no limits are established as to eligible profits from the operation of a ship (see the section on ancillary activities).

4.2.1.9. Aid cumulation/Aid Ceiling

(162) In line with Chapter 11 of the Maritime aid Guidelines, the total aid[93] 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.

(163) Greece states that it currently does not apply non-tax measures for the benefit of shipping companies. Therefore the aid ceiling prescribed in Chapter 11 of the Maritime Guidelines should normally not be exceeded. This is, however, without prejudice to the possible future analysis of the compatibility of the Greek provisions applicable *inter alia* to taxation of seafarers and social charges applicable with respect to seafarers. In addition, any possible alleviation of hidden tax liabilities of companies entering tonnage taxation (see the chapter on taxation of capital gains from ships) should be taken into account as an aid measure additional to tonnage tax and compatible only insofar it does not exceed the aid ceiling.

(164) Thus, the Commission concludes that Greece failed to introduce control mechanisms to ensure the respect of rules on aid cumulation, in line with Chapter 11 of the Maritime Guidelines, to ensure that the aid ceiling is not exceeded.

4.2.2. Preferential tax treatment of wider maritime cluster activities

(165) The Commission maintains its position expressed in the Article 21 letter that exemption from the usual corporate income tax rules of the wider maritime sector companies, except for commercial managers of vessels which appear to be designated as "freighters" under the Greek legislation, cannot be accommodated within the scope of the Maritime Guidelines.

(i) Commercial operators of vessels

(166) While under certain conditions, commercial operators of vessels (such as time/voyage charterers or similar operators) providing transport services with fully equipped and manned ships of other companies can benefit from aid under the Maritime Guidelines, the taxation system so far selected by Greece for this

[93] Except for aid for training aid, restructuring aid, aid related to public service obligations and start-up aid for new short sea shipping services.

type of operations cannot be recognized as compatible with the Maritime Guidelines.

(167) Under certain conditions (see below), the Maritime Guidelines as interpreted by the Commission's decisions allow voyage/time charterers and similar commercial operators of ships to benefit from tonnage taxation. However, the Greek authorities currently provide a different taxation system (taxation based on import of funds), which appears to be even more advantageous than tonnage taxation. Indeed, the taxation based on imported funds sets the minimum taxation level at 2500 USD[94] which is less than a tonnage tax for one medium-sized ship. Moreover, and most importantly, the taxation based on imported funds is only temporary, for a period of 8 years, and thus it does not address the otherwise permanent exemption of such commercial operators from any tax. Therefore, the tax benefit that such commercial operators are allowed to enjoy on a permanent basis consists in their tax exemption, and not in their taxation on the basis of a different system (imported funds).

(168) Even more importantly, in line with previous Commission decisions, such companies can only benefit from tonnage taxation if they contribute to an objective of the Maritime Guidelines, notably the development of EU flag or the preservation of EU know-how or a combination of the two. This is the case, for instance, if, 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 itself ensures crew and technical management and such vessels constitute at least 20% of the total tonnage taxed fleet.[95] Another possibility is that the share of the vessels that are both non-EEA and time/voyage chartered does not exceed 75% of the beneficiary's fleet under tonnage tax.[96] A further possibility is for Member States to require that at least 25% of the beneficiary's entire fleet is EEA flagged.[97] In all abovementioned cases, the tonnage tax beneficiary stays under the obligation to maintain/increase the share of EEA flagged tonnage of its own fleet (owned vessels or chartered in on a bare-boat basis).

(169) Thus the Commission concludes that the conditions for aid currently provided by Greece to commercial operators providing transport services with fully equipped and manned ships of other companies are not in line with the Maritime Guidelines.

(ii) Other maritime cluster companies

(170) As regards other maritime cluster companies (companies involved in insurance, damage adjustment, brokerage of sales transactions or of shipbuilding or of freightage or of insurance for ships flying a Greek or foreign flag over 500 gross tonnes as well as in representation of ship-owning companies), they provide neither maritime transport services in the sense of the Maritime Guidelines nor ship management services[98] in the meaning of the Ship-Management

94 50 000 USD multiplied by 5% according to Law 4336/2015.

95 E.g. Commission decision in the Danish tonnage tax case N171/2004, OJ C136 of 03.06.2005.

96 E.g. Commission decision in the French tonnage tax case N737/2002, OJ C38 of 12.02.2004.

97 E.g. Commission decision in the French tonnage tax case SA.14551 (2013/C), OJ L110 of 29.04.2015.

98 I.e. crew management or technical management of ships.

Guidelines[99]. Therefore, the Commission concludes that they do not qualify for any aid neither under the Maritime Guidelines nor under the Ship-Management guidelines. Such companies must be subject to the general rules on taxation.

(171) The Commission also notes that there is no justification for recognising preferential tax treatment of such companies as compatible directly on the basis of Article 107(3)(c) TFEU, especially in view of the considerations in recital (109) above. Besides, such aid measures would have a doubtful outcome.[100]

4.2.3. Exemption from taxation of dividends and capital gains related to shares in shipping and related companies; exemption from inheritance tax at the level of shareholders of ship-owning and ship-management companies

(172) As already stated in its decision in the Maltese tonnage tax case[101], the Commission considers that income related to dividends paid by shipping companies and capital gains arising from the sale of shares in shipping companies does not constitute income arising from *shipping activities,* but rather income arising for the shareholders from their *investment activities*. Therefore no tax reliefs are justified based on the Maritime Guidelines. Indeed, the Maritime Guidelines clearly state that Member States should "*preserve […] normal tax levels for […] personal remuneration of shareholders and directors*". Such a rule is necessary in order for compatible aid to focus on the activity that needs support, and to limit as much as possible the distortion of competition in other sectors. Otherwise, shareholders of companies receiving compatible aid would also be entitled to tax exemptions (and so would the possible shareholders of those shareholders too). This, however, would multiply to unpredictably high levels the amount of aid initially accepted for a specific company in a given sector, so that in the end multiple sectors of the economy could be "contaminated" by such aid (according to the beneficiary shareholders' activities). Such an outcome would be against the effectiveness of State aid rules and also against the principle of prohibition of State aid, which requires any exception (compatible aid) to be applied in a restrictive and well-targeted manner.

(173) In the same vein, the exemption of shareholders of shipping companies from inheritance tax is deemed to go beyond the scope of the Maritime Guidelines. Indeed, inheritance of shares in shipping companies does not constitute income from shipping activities.

(174) The Maritime Guidelines allow tax benefits with respect to shipping activities and seafarers. Even if dividends paid by shipping companies initially stem from the

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[99] Communication from the Commission providing guidance on State aid to shipmanagement companies OJ C 132, 11.6.2009, p. 6–9.

[100] It is noted that London has a leading position in the world with respect to such types of activities without special support measures. More than a fifth (21%) of international marine insurance premiums are written through London, and around 40% of the global chartering market takes place in London. There are 200 ship-broking firms operating in the UK. The UK accounts for around 9% of the world loan book in the sector and Lloyd's Register of London is the second largest ship classification society in the world, making up 18% of the world's fleet (see e.g. https://www.thecityuk.com/media/latest-news-from-thecityuk/london-retains-position-as-leading-global-maritime-centre/).

[101] See Commission's decision on 25.07.2012 in Case SA.33829 (2012/C), OJ C289 of 25.09.2012

shipping activities, the taxation of dividends paid by shipping companies should be differentiated from the taxation of shipping companies themselves. Indeed, it's a common practice throughout EU to tax dividends paid by the company subject to corporate income tax or its substitute. These are two different taxes and exemption from one of them does not automatically justify the exemption from the other tax. Participation exemptions are acceptable as long as they are applied across the board to all economic sectors.

(175) The Greek authorities consider that capital gains from the sale of shares in shipping companies should be tax exempt similarly as capital gains from ships acquired and sold, while under the tonnage tax system. However, the Commission does not share this view. Acquisition of ships for performing shipping activities and their subsequent sale either with a view of buying a new ship or scaling down shipping activities is an integral part of the *shipping* business. This is not the case for buying and selling shares in shipping companies, which is rather an integral part of the *investment* business (not eligible for tonnage taxation under the Maritime Guidelines).

(176) The same arguments apply *mutatis mutandis* to the exemption from the inheritance tax on transfers of vessels, stocks or shares of companies that own vessels with gross tonnage of over 1 500 and of stocks or shares of holding companies that hold stocks or shares of the aforementioned ship-owning companies, whether directly or through holding companies. In addition, the Commission notes that the shipping businesses in Greece are often family businesses and therefore availability of the relevant exemption plays a role when making investment decisions.

(177) […].

(178) […] [102]

(179) Therefore, the Commission concludes that the tax exemptions concerning dividends from shipping companies, capital gains related to shares in shipping companies and inheritance of shares in shipping companies and similar assets are not in line with the Maritime Guidelines. Even more so, any equivalent benefits provided by Law 27/1975 to entities other than genuine shipping companies are clearly not in line with the Maritime Guidelines.

(180) The above assessment of the Commission does not take into account Law 4301/2014 ratifying the agreement signed between the Greek Government and the Maritime Community and extending application of "special solidarity contribution"[103] which is levied on the income of natural persons (including repatriated dividends for the shipping companies' shareholders)[104] to members of the shipping community. As indicated above in recital (153), this is a *temporary* measure, which is distinct and unconnected to the *permanent* Greek tonnage tax legislation. Such temporary measure does not amend the permanent tax

[102] […]

[103] Article 29 of Law 3986/11 (as amended by article 1 par.7 of Law 4334/2015).

[104] E.g. for total net income of at least EUR 100 000 euros, the special contribution is calculated at 6% for the whole amount (dividends from shipping companies included), whereas for total net income of at least EUR 500 000, the applicable rate is 8%.

exemptions concerning dividends from shipping companies, capital gains related to shares in shipping companies and inheritance of shares in shipping companies and similar assets.

5. CONCLUSION

(181) The tonnage tax scheme, the exemption from taxation of capital gains from the sale of tonnage taxed ships, the tax benefits for wider maritime cluster companies, the exemption from taxation of dividends paid by shipping companies, the exemption from taxation of capital gains related to shares in shipping companies and the exemption from the inheritance tax provided for in Law 27/1975 are measures which constitute State aid within the meaning of Article 107(1) TFEU.

(182) The Commission concludes that several aspects of Law 27/1975 are not in line with the Maritime Guidelines as interpreted in the Commission's decision-making practice. Notably:

(a) The scope of eligible vessels is too broad (as it *inter alia* includes fishing vessels, floating rigs / floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas); the eligibility conditions set in the Maritime Guidelines for tugboats and dredgers are not respected.

(b) The appropriate mechanism is lacking to ensure that all tonnage taxed companies/groups increase or at least keep the share of EEA–flagged tonnage of their entire fleet.

(c) Certain tonnage tax rebates and full exemptions (even if temporary) existing under the Greek legislation, in addition to being discriminatory, lead to a taxation level falling below what has been accepted for other EU Member States.

(d) The Greek tonnage tax scheme does not specify which revenues from a given eligible vessel can be considered eligible for tonnage taxation (as core revenues or as ancillary revenues of maritime transport). Unconditional acceptance of all revenues from ships under tonnage taxation may lead to granting aid in excess of what is allowed by the Maritime Guidelines as interpreted in the Commission's decision-making practice. In addition, it threatens to distort competition with land-based services.

(e) Absence of clear legal provisions on bare-boat chartering out may lead to pure ship lessors, not providing maritime transport services, benefiting from tonnage taxation, which is against the Maritime Guidelines which limit aid to maritime transport providers.

(f) The way profit from eligible activities is calculated is not based on a clear separation of accounts to clearly distinguish such profits from other profits originating from non-eligible activities (ring-fencing), as required by the Maritime Guidelines.

(g) There are no clear provisions and safeguards for the respect of aid ceilings and cumulation. Moreover, the aid ceiling may *inter alia* be exceeded

when previously over-depreciated ships[105] enter tonnage taxation without settlement of the hidden tax liability (see section 4.2.1.5).

(h) Commercial operators of vessels (such as time/voyage charterers and similar operators) providing transport services with fully equipped and manned ships of other companies are unconditionally subject to preferential tax treatment without specific obligations in terms of contribution to the objectives of the Maritime Guidelines. In addition, the aid mechanism chosen for such operators by Greece is more generous than tonnage tax.

(i) The exemption from corporate income taxation of maritime cluster companies, including companies involved in insurance, damage adjustment, brokerage of sales transactions or of shipbuilding or of freightage or of insurance for ships over 500 gross tonnes, as well as in representation of ship-owning companies goes beyond the scope of the Maritime Guidelines and Ship-management Guidelines.

(j) The exemption from taxation of dividends and capital gains as well as from inheritance tax at the level of shareholders of ship-owning and ship-management companies goes beyond the Maritime Guidelines as the relevant income is not income from shipping activities, but from investment activities.

6. EXISTING AID

(183) Pursuant to the classification of some aspects of the Greek tonnage tax system and related legislation as incompatible State aid, as described above, the Commission has to determine whether these measures would have to be considered new or existing aid.

(184) Existing aid, as defined in Art. 1(b) of the Procedural Regulation, would be either a measure that was in place before the accession of Greece to the EU, a measure that has been authorised, a measure that is deemed existing aid pursuant to Article 17 of the Procedural Regulation, or a measure that was not aid when it was put into effect, but became aid due to the evolution of the internal market. Any aid not falling under the definition of existing aid would be considered new aid pursuant to article 1(c) of the Procedural Regulation.

(185) The Greek authorities claim that the scheme is an existing aid as it was put into force long before Greece joined the EU in 1981. The measures in question entered into force in 1975 and similar measures had already existed in Greece prior to that date. They further claim that at the time of negotiations for the accession of Greece to the EEC (1981), after deliberations, the scheme was found to be compatible with the terms of the EEC Treaty.

(186) The Greek authorities have not provided any specific evidence to substantiate their claim that the scheme had been found to be compatible with the EEC Treaty at the time of accession negotiations. However, the Commission agrees that in

[105] Compared to their market value.

general the relevant measures were in force prior to 1981 by virtue of Law 27/1975.[106]

(187) The fact that for consecutive 5-year periods since the adoption of Law 27/1975 the tonnage tax rates have been increasing by 4% annually does not render the aid new. Article 4(1) of Regulation 794/2004 (hereinafter "Implementing Regulation")[107] allows Member States to increase the amount of an existing aid scheme by up to 20% without that aid becoming new. *A fortiori*, the increase of tonnage tax rates by 4% annually merely decreases the amount of aid granted by that scheme, and thus the Greek tonnage taxation scheme remains existing aid.

(188) The fact that in 2013[108] Greece imposed tonnage taxation on foreign-flagged vessels of Article 26 of Law 27/1975 managed by companies established in Greece pursuant to Article 25 does not render that aid new. Until that moment, companies owning such vessels were completely exempted from taxation by virtue of Article 26 of Law and that constituted existing aid since it had been adopted prior to 1981. In 2013 Greece merely aligned two existing aid schemes (tonnage taxation of Greek-flagged vessels and full tax exemption of foreign-flagged vessels) by aligning the most distortive one (full tax exemption of foreign-flagged vessels) to the least distortive one (tonnage taxation of Greek-flagged vessels). Moreover, the full tax exemption of foreign-flagged vessels can be seen as tonnage taxation at a rate of zero, and thus in 2013 Greece essentially increased that rate to the levels applicable for Greek-flagged vessels, so that there was an increase in tonnage tax imposed on foreign-flagged vessels and a corresponding decrease of the amount of aid they had been receiving until that moment, in line with Article 4(1) of the Implementing Regulation.

(189) Furthermore, the adoption of 2004 Maritime Guidelines and the appropriate measures foreseen in these Guidelines[109] do not change this assessment for the following reasons.

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[106] However, the Commission notes that the extension of the benefits of Articles 25 and 26 of Law 27/1975 to vessels above 500 GT (from 1000 GT applied previously) took place in 1990 by virtue of Article 77(5) of Law 1892/1990. Therefore, this severable part of the Greek tonnage taxation scheme concerning those additional beneficiaries cannot be considered existing aid. Furthermore, in August 2015 (Law 4336/2015, Government Gazette, Series A' 94 of 14.8.2015) Greece added Article 26A in Law 27/1975, whereby it subjected to tonnage taxation maritime transporters with EEA-flagged vessels (mainly vessels below 500 GT and vessels plying domestic routes, which could not previously benefit from tonnage taxation) and exempted their shareholders (or other type of owners) from the taxation of relevant dividends. This severable part of the Greek tonnage taxation scheme concerning those additional beneficiaries cannot be considered existing aid. Therefore, those two severable parts of the Greek tonnage taxation scheme should be regarded as not covered by the present decision proposing appropriate measures to Greece.

[107] Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1-134.

[108] Article 26 of Law 27/1975, as amended by Law 4110/2013 (Government Gazette, Series A' 17 of 23.1.2013).

[109] Section 13 of the 2004 Maritime Guidelines required Member States to adopt appropriate measures in order to comply with them by 30 June 2005 at the latest and were invited to confirm that they accept these proposals for appropriate measures in writing by 30 June 2004.

(190) According to Article 23 of the Procedural Regulation concerning existing aid procedure, the Member States have to send their agreement to implement appropriate measures and the Commission only takes note of this acceptance.

(191) In a letter dated 15 December 2004 the Greek authorities stated that they *"endorse the revised Guidelines for state aid to maritime transport, as they include important arrangements which match the measures already adopted by the Greek government"*. Consequently, the Greek authorities concluded that *"Greece is not expected to take corrective measures in this area"*. Shortly before that (on 3 December 2004), the Greek authorities sent to the Commission an annual report on aid to shipping which contained as an Annex the applicable Greek legislation. The Commission never replied to Greece.

(192) As Greece has not explicitly accepted appropriate measures under the Maritime Guidelines and the Commission did not take any follow up steps, the measures foreseen in Law 27/1975 continue to be considered existing aid.

7. APPROPRIATE MEASURES

(193) Where an existing aid is found to be incompatible with the internal market, such aid should be subject to appropriate measures under Article 108(1) TFEU, with a view to abolish or amend the scheme. With respect to the principle of legal certainty pertaining to the elimination of existing aids, the General Court recognised that "the Commission is, as part of its constant review of existing aid, only empowered to require the elimination or modification of such aid within a period which it is to determine".[110]

(194) In light of the above, the Commission considers that Greece should take appropriate measures to amend Law 27/1975 and related legislation as may be necessary. Notably, the Commission requires the Greek authorities to implement the following amendments in Law 27/1975 to bring it in line with the applicable rules in the future:

(a) limit eligible vessels to those active in the maritime transport of goods and passengers and assimilated vessels, such as those specialised for servicing off-shore activities , including carrying personnel, material and equipment or performing installation and maintaining activities if their operation is exposed to international competition similar to maritime transport ships and requires similarly qualified staff (e.g. cable-laying, pipe-laying, research and crane vessels or vessels providing rescue at sea and marine assistance on the high seas);

(b) limit eligibility to tugboats registered in EEA Member States and spending more than 50 % of their operating time in maritime transport operations;

(c) limit eligibility to dredgers registered in an EEA Member State and spending more than 50 % of their operating time in maritime transport operations, and limit aid exclusively to the maritime transport part of dredgers' activities;

[110] Joined cases T-298/97, T-312/97, T-313/97, T-600/97, T-607/97, T-1/98, T-3/98, T-6/98, T-23/98, *Mauro Alzetta and others v Commission,* ECLI:EU:T:2000:151, para. 148.

(d) exclude from the tonnage tax scheme fishing vessels as well as floating rigs / floating refineries used for exploration, sea-bed drilling, sea pumping, refining or storing of oil or natural gas;

(e) ensure that revenues from activities other than maritime transport services shall only be eligible to the extent they stem from closely related activities (ancillary activities) and they do not exceed revenue from core shipping activities for a given vessel. Therefore, revenues from ancillary activities must be less than 50% of total tonnage taxed revenues, which includes revenues from both core and ancillary activities in maritime transport. Revenues from activities that are entirely unrelated to maritime transport should never be tonnage taxed;

(f) exclude from tonnage taxation[111] the chartering out of vessels on bare-boat basis and similar transactions[112] between third parties, i.e. not part of the same group of companies. Instead, ship leasing companies should be subject to the general rules of revenue taxation in Greece. The chartering out of vessels on bare-boat basis to third parties and similar transactions can be eligible only as ancillary activity of genuine shipping companies in the context of temporary overcapacity subject to strict conditions[113];

(g) ensure that capital gains arising from the sale of ships are eligible only if the relevant ships have been used by genuine shipping companies for the purpose of maritime transport and were acquired while under tonnage taxation; exclude capital gains arising from the sale of ships for ship-owning companies not involved in the provision of maritime transport services (see explanation provided in section 4.2.1.5);

(h) abolish discriminatory provisions of Law 27/1975 which limit the tonnage tax rebates and full tax exemptions (even if temporary) to ships built or repaired in Greece or to ships owned by Greek nationals;

(i) introduce an EEA flag-link requirement for ships over 500 gross tonnes (other than coastal passenger vessels and commercial vessels plying domestic routes). In line with the Maritime Guidelines, beneficiaries of tonnage taxation should have an obligation to increase or at least maintain the share of vessels operated under EEA flag, unless the beneficiary operates at least 60% of the tonnage of its fleet under EEA flag;

(j) introduce transparent accounting (separation of accounts) in cases where a ship-owning company is also engaged in other economic activities, which are not eligible under the tonnage tax scheme;

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[111] And *a fortiori* from full tax exemption or from taxation systems that are even more advantageous than tonnage taxation.

[112] Including but not limited to financial leasing.

[113] Bare-boat chartering out activities must be related to temporary excess capacity for a period of up to 3 years; temporary excess capacity must be related to the beneficiary shipping company's own shipping services, and thus excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation; and the proportion of bare-boat chartered-out capacity should not exceed a maximum percentage of the shipping company's fleet under the tonnage tax scheme, which can reach at most 50%.

(k) introduce explicit rules on verification of aid cumulation to ensure that the aid ceiling is not exceeded, especially through measures related to so called "hidden tax liabilities"[114] and possible direct aid measures, applied in addition to tonnage tax system and tax/social charges relieves for seafarers;

(l) abolish tax benefits applied to the maritime cluster companies or companies other than maritime transport providers and assimilated operators[115];

(m) Adjust aid conditions for commercial operators of vessels (such as time/voyage charterers and similar operators) providing transport services with fully equipped and manned ships of other companies. Specifically, these operators may benefit from tonnage taxation, provided they contribute to the objectives of the Maritime Guidelines, i.e. preservation of the maritime know-how or/and EEA flagging. These objectives can be considered achieved, for instance, in one of the following situations: (a) 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 itself ensures crew and technical management and such vessels constitute at least 20% of the total tonnage taxed fleet; (b) the share of the vessels that are both non-EEA and time/voyage chartered does not exceed 75% of the beneficiary's fleet under tonnage tax; (c) at least 25% of the beneficiary's entire fleet is EEA flagged. In all those cases the tonnage tax beneficiary stays under the obligation to maintain/increase the share of EEA flagged tonnage of its own fleet (owned vessels or chartered in on a bare-boat basis);

(n) abolish tax exemptions for income related to dividends paid by shipping companies[116] and capital gains arising from the sale of shares in shipping companies;

(o) abolish the exemption from inheritance tax for shareholders of shipping companies;

(p) require tonnage tax beneficiaries to provide self-assessment on the compliance with all controllable parameters[117], including flagging, bare-boat chartering out, time-chartering, aid ceiling, share of operational time spent by ships in maritime transport operations, ancillary activities, etc.

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[114] Liabilities related to ships entering the tonnage tax scheme after being amortised under the usual income taxation rules

[115] Operators of cable-layers, pipe-layers, crane and research vessels, as well as vessels providing rescue at sea and marine assistance on the high seas. Tugboats and dredgers can also be assimilated under the conditions of the Maritime Guidelines.

[116] This applies *a fortiori* to tax exemptions for income related to dividends paid by non-shipping companies, such as the wider maritime cluster companies of Article 25 of Law 27/1975. Article 45 of Law 4141/2013 seems to have introduced the general 10% tax rate for dividends to shareholders that are natural persons, but Article 25(5) of Law 27/1975 appears to have exempted from taxation not only dividends of natural persons (no longer applicable) but also dividends of legal persons (apparently still applicable).

[117] See e.g. recent Commission decisions in the Croatian and Italian tonnage tax cases (SA.37912, SA.38085).

when submitting annual tax returns. This is without prejudice to the necessity of regular/random checks by the tax authorities, which should be required and further specified in the applicable legislation, as regards all controllable parameters.

(195) The Greek authorities are hereby invited to modify the current legislation in a manner ensuring that the abovementioned incompatible measures under the Greek scheme for tonnage taxation (mainly Law 27/1975) are removed or amended in a way that renders them compatible. The necessary modifications shall be adopted within a time period of **24 months** as from receipt of this decision and apply at the latest from 1 January 2019.

(196) The Greek authorities are invited to inform the Commission, in writing that Greece accepts, pursuant to Article 23(1) of the Procedural Regulation, unconditionally and unequivocally this proposal for appropriate measures in its entirety within two months from the receipt of this proposal, otherwise the Commission will proceed in accordance with the rules laid down in Article 23(2) of the Procedural Regulation.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
1049 Brussels
Belgium
Fax No: +32-2-296.12.42

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

REGULACIÓN UE DE LAS AYUDAS DE ESTADO AL TRANSPORTE MARÍTIMO
MATIZACIONES A LAS DIRECTRICES DE 2004

1. Introducción. Objeto de esta nota.

Como es sabido, las ayudas de Estado al transporte marítimo vienen reguladas en la UE mediante unas Directrices de la Comisión, de 2004[(1)], que permiten, entre otras medidas, reducciones fiscales y sistemas de fiscalidad por tonelaje a las empresas navieras.

En aplicación de su papel de vigilante del cumplimiento de las normas comunitarias, la Comisión, actuando de oficio, abrió en noviembre de 2011 una investigación sobre la legislación de Grecia sobre estas materias, en particular sobre la ley griega 27/1975, sobre fiscalidad de las empresas navieras. Tras más de 4 años de investigación, reuniones e intercambio de información, la Comisión ha hecho pública recientemente una carta que envió al gobierno griego en diciembre de 2015 en la que, básicamente:

- Declara que muchos aspectos de la legislación griega son ayudas de Estado incompatibles con la normativa comunitaria y van mucho más allá de lo que permiten las Directrices, tanto en sus cuantías como en las empresas y tipos de buques beneficiarios.

- Reconoce, sin embargo, que dichas ayudas deben calificarse como "ayuda existente" por haber sido puestas en vigor antes de la entrada de Grecia en la UE.

- En consecuencia, determina que Grecia debe modificar su legislación para alinearla con las Directrices y le da un plazo de 2 años para introducir dichas modificaciones, que deben ser efectivas a más tardar el 1 de enero de 2019 (dentro de 3 años).

Independientemente de esta decisión respecto al caso de Grecia, que tendrá poca o ninguna repercusión directa sobre las empresas españolas, la carta de la Comisión es muy extensa y repasa muchos aspectos de las propias Directrices y, lo que es aún más interesante, de la interpretación y aplicación que la Comisión ha dado a las mismas en diversos casos con varios países.

Esta nota resume algunos aspectos de dicha carta que pueden ser de interés para la aplicación de las Directrices por las empresas navieras españolas.

2. Resumen y conclusiones de posible interés para empresas navieras españolas.

La Comisión, en su extensa carta de 45 páginas, pide al gobierno griego que modifique su actual régimen de ayudas al transporte marítimo con arreglo a los criterios siguientes (que se entiende son aplicables al resto de Estados miembros y que se amplían en algunos casos en el apartados 3):

– Sólo podrán **beneficiarse de ayudas (incluyendo el régimen de *tonnage tax*) los buques dedicados al transporte marítimo de mercancías y pasajeros, y buques "asimilados"** (como los que presten servicios a actividades *off-shore*, incluyendo el transporte de personal, material y equipos o se dediquen a operaciones de instalación o mantenimiento, por ejemplo, tendido de cables o tuberías, salvamento, etc., siempre y cuando su actividad esté sometida a competencia internacional.

(1) Comunicación de la Comisión C(2004) 43 — Directrices comunitarias sobre ayudas de Estado al transporte marítimo (DOUE C13 del 17.01.2004)

- **Los remolcadores y dragas** sólo podrán beneficiarse cuando estén registrados en un Estado miembro del Espacio Económico Europeo (EEE[2]) y **dediquen más del 50% de su tiempo a operaciones de transporte marítimo**. En el caso de las dragas, la ayuda sólo se aplicará a su actividad de transporte marítimo.

- Los ingresos por **actividades distintas de los servicios de transporte marítimo** sólo podrán beneficiarse de un régimen de tributación especial en la medida en que se deriven de **actividades estrechamente relacionadas con el transporte marítimo** (actividades auxiliares, ej: servicios de catering en buques de pasaje) y que **no superen los ingresos procedentes de la actividad de transporte** de un buque determinado. Por tanto, los ingresos de las actividades auxiliares deben ser inferiores al 50% de los ingresos totales. Los ingresos por actividades que no guarden relación con el transporte marítimo en ningún caso podrán beneficiarse.

- La cesión de buques en **arrendamiento a casco desnudo no podrá beneficiarse** de la fiscalidad especial salvo en el caso de **operaciones intragrupo** (sin limitaciones) o que lo realice una empresa de transporte marítimo "genuina" para **hacer frente a un excedente temporal de capacidad**, en este último caso con determinadas limitaciones cuantitativas que se exponen más abajo.

- Las **plusvalías** derivadas de la venta de buques podrán ser objeto de bonificaciones fiscales o *tonnage tax* si los buques son operados por compañías navieras "genuinas" y fueron adquiridos y vendidos cuando la empresa ya formaba parte de un sistema de *tonnage tax.* Si la empresa entrase al *tonnage tax* en un momento posterior a la adquisición del buque, deberá tributar en concepto de impuesto de sociedades por la "deuda fiscal oculta", calculada como la **diferencia entre el valor de mercado y el valor contable del buque en el momento de incorporarse al *tonnage tax*.**

- Las empresas que presten servicios de transporte marítimo con buques cuya gestión técnico-náutica la realiza un tercero (buques tomados en **fletamento por tiempo o por viaje**) sólo podrán beneficiarse de ayudas cuando cumplan al menos **una** de las siguientes condiciones:
  - La empresa beneficiaria realiza la gestión técnica y tripula al menos el 20% de su flota total.
  - El porcentaje de buques de la empresa beneficiaria registrados en países no pertenecientes al EEE y tomados en fletamento por tiempo/viaje, no exceda del 75% de su flota total bajo el *tonnage tax.*
  - Al menos el 25% de su flota está registrada en un país del EEE.

- Los ingresos provenientes de **dividendos** pagados por una empresa beneficiaria y las ganancias de capital derivadas de la venta de acciones no pueden beneficiarse de ninguna ayuda ni régimen de tributación especial.

- Finalmente, no se podrán aplicar beneficios fiscales con respecto al **impuesto de sucesiones**, en el caso de que exista

3. Alcance de las directrices.

3.1 Tipos de buques.

La Comisión confirma que, en principio, para poder ser beneficiarios de las Directrices, los buques deben **dedicarse al transporte marítimo de mercancías y/o pasajeros**.

(2) Los 28 países integrantes de la UE más Islandia, Liechtenstein y Noruega.

Confirma también que, según prevén las Directrices, los **remolcadores y dragas** deben dedicarse al transporte, al menos en un 50% de su actividad, para poder beneficiarse de las ayudas autorizadas en las Directrices. No obstante, aclara que también pueden beneficiarse otros tipos de buques:

> *"…the Commission has decided 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 maintaining activities (e.g.* ***cable-laying, pipe-laying, research and crane vessels****) or* ***vessels providing rescue at sea and marine assistance on the high seas****, provided they require similarly qualified staff and are similarly exposed to international competition."*

La Comisión no menciona expresamente buques de servicios off-shore como **apoyo a plataformas, manejo de anclas**, etc. pero parece deducirse de lo anterior que son también posibles beneficiarios.

3.2 Tratamiento de la cesión de buques en arrendamiento a casco desnudo

Como ya pusiera de manifiesto en el Dictamen Motivado de 2011 y la Decisión de 2013 sobre el tax lease español, la Comisión considera que, para poder beneficiarse de las ayudas autorizadas en las Directrices, **las empresas deben "dedicarse al transporte marítimo"** en el sentido de **explotar buques de las categorías señaladas en el apartado anterior**.

La Comisión considera que, con carácter general, una empresa **propietaria** de un buque (incluso de los tipos beneficiarios antes indicados) pero que no lo explote directamente, sino que **se limite a arrendar dicho buque a casco desnudo** (*bare boat chartering out*), no se dedica al transporte marítimo y, en consecuencia, no puede beneficiarse de las Directrices. En consecuencia, no podría aplicar el Impuesto por Tonelaje. Cabe deducir que, en el caso de un buque inscrito en el Registro Especial de Canarias (REC), **tampoco podría beneficiarse del 90% de bonificación en el Impuesto de Sociedades**.

No obstante, la Comisión contempla **dos excepciones** a este principio general:

- **Arrendamientos entre dos empresas del mismo grupo naviero**, siempre que el beneficiario, como grupo de empresas, desarrolle actividades de transporte marítimo, independientemente de que realice la actividad mediante una misma empresa que a la vez es propietaria y explota un barco o mediante dos empresas, una propietaria del buque que arrienda éste a casco desnudo a la segunda, del mismo grupo, que es la que realiza transporte marítimo.

- Aparte de las operaciones intragrupo, la Comisión puede aceptar **una cierta flexibilidad a favor de compañías navieras "genuinas" (que prestan servicios de transporte marítimo) y compañías asimiladas**, siempre que se cumplan **todas** las condiciones siguientes:
  - Que el arrendamiento se produzca con el fin de hacer frente a un **excedente de su capacidad de transporte**, por un **periodo máximo de 3 años**;
  - El excedente mencionado en el punto anterior debe estar relacionado con los servicios de transporte marítimo de la compañía beneficiaría. Es decir, los posibles beneficios obtenidos de **un buque adquirido específicamente** (ya sea mediante un contrato de compraventa o de arrendamiento) **con el fin de ser cedido en casco desnudo** a un tercero, **no podrán beneficiarse** del *tonnage tax*;
  - **El volumen de buques cedidos en arrendamiento no podrá exceder del 50% de la flota de la empresa naviera que tributa bajo el *tonnage tax***. La Comisión entiende que, si más del 50% de la flota de una empresa beneficiaria del *tonnage tax* se encuentra cedido en arrendamiento a casco desnudo, el arrendamiento no se podría considerar como una actividad **complementaria o auxiliar**.

3.3 Ingresos susceptibles de incluirse en el régimen de *tonnage tax*

La Comisión autorizará que los ingresos procedentes de **actividades auxiliares distintas de los servicios de transporte marítimo** estén exentas solamente en la medida que se deriven de **actividades estrechamente relacionadas con la actividad principal desarrollada a bordo de un buque, y siempre que dichos ingresos no superen el 50% de los ingresos totales obtenidos por la empresa sujeta a *tonnage tax***.

Asimismo, los ingresos procedentes del transporte marítimo y de servicios o actividades auxiliares al mismo, deben suponer más del 50% del total de los ingresos netos de la empresa beneficiaria.

Los ingresos por actividades que no guardan relación con el transporte marítimo nunca tributarán bajo el sistema de *tonnage tax*.

A estos efectos, la Comisión considera **ingresos principales** los obtenidos por venta de billetes, por el transporte de carga y, en el caso del transporte de pasajeros por mar, también por la ocupación de camarotes y la venta de alimentos y bebidas **para consumo inmediato a bordo**.

Ejemplos de **servicios auxiliares aceptables** serían, en el caso de buques de pasaje, los servicios de hotel, catering, espectáculos, spa, peluquería y servicios de entretenimiento; asimismo, el alquiler de vallas publicitarias, la venta de objetos a bordo, el arrendamiento de instalaciones de barco, la intermediación para la realización de excursiones, etc.

Estas actividades son elegibles para el *tonnage tax*, siempre que se lleven a cabo como actividades auxiliares a la actividad de transporte de pasajeros por mar y siempre que sean consumidos o utilizados a bordo del buque. Asimismo, la Comisión también considera como **servicios elegibles aquellos que son parte de un paquete total ofrecido a los clientes**.

3.4 Operadores de buques

Según interpreta la Comisión, determinados **operadores de buques tomados en fletamento por viaje o por tiempo**, que realizan transporte marítimo con buques totalmente equipados y tripulados propiedad de otras empresas, pueden beneficiarse de determinadas ayudas, como el *tonnage tax*, siempre y cuando contribuyan a alguno de los objetivos señalados en las Directrices de 2004: aumento del tonelaje bajo la bandera de un Estado miembro del EEE, o a preservar el *know-how* marítimo, o ambos. Según diversas decisiones de la Comisión sobre los sistemas de *tonnage tax* aplicados por varios países europeos, esto sucede, si, por ejemplo:

— Además de los buques que tiene tomados en fletamento de otras empresas (equipados y tripulados), el beneficiario del *tonnage tax* tiene en su poder la gestión técnica de al menos el 20% de la flota total que opera sujeta a *tonnage tax*.

— El porcentaje de la flota tomada en fletamento por tiempo o viaje bajo banderas no comunitarias no excede del 75% de la flota total sujeta a *tonnage tax*.

— Un Estado miembro exige que el 25% de la flota total controlada por el beneficiario del *tonnage tax* esté abanderada en el EEE.

En todos los casos anteriores, la Comisión exige que el beneficiario del *tonnage tax* mantenga o aumente el porcentaje de su flota abanderado en Europa (buques en propiedad, fletados o arrendados).

3.5 Compra y venta de buques y de acciones de una empresa naviera

La Comisión entiende que, tanto la **adquisición de un buque** para dedicarlo al transporte marítimo, como la consiguiente **venta del mismo**, ya sea para adquirir un nuevo buque o para reducir el volumen de negocio, forman parte del negocio marítimo, y por tanto **los posibles beneficios (plusvalías) obtenidos de dichas operaciones de compra y venta pueden ser beneficiarias de las exenciones fiscales para el transporte marítimo,** siempre y cuando la operación de compraventa la realice una empresa naviera "genuina" **y el buque en cuestión haya sido tanto adquirido como vendido mientras formaba parte del sistema de *tonnage tax***.

Por el contrario, si el buque fue adquirido antes de que la empresa formara parte del *tonnage tax*, previamente a la entrada en el régimen se deberá liquidar la posible deuda fiscal "oculta", que normalmente se calculará como la **diferencia entre el valor de mercado y el valor contable del buque en el momento de incorporarse al *tonnage tax***.

Por su parte, la **compra y venta de acciones de una empresa naviera** y por tanto las correspondientes ganancias de capital que pudieran generar, forman parte de las inversiones generales de la empresa, y por tanto **no se trata de operaciones elegibles para tributar bajo el *tonnage tax***. Asimismo, el **pago de dividendos** por parte de las empresas navieras, aun cuando estos provengan de la actividad del transporte marítimo, suele quedar fuera del régimen de ayudas, debiendo tributar por el impuesto de sociedades o similar.

Finalmente, no se podrán aplicar beneficios fiscales con respecto al **impuesto de sucesiones** en el caso de **heredar un buque, acciones o participaciones de una empresa naviera** o acciones o participaciones de una empresa que a su vez posee parte de una empresa naviera.