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**Subject: State Aid SA. 48949 (2018/N-2) - Slovenia  
Prolongation of the Tonnage Tax Scheme**

Sir,

### 1. PROCEDURE

- (1) On 9 August 2017 Slovenia notified amendments to and a prolongation of the existing Tonnage Tax Scheme which was approved by the Commission on 13 January 2009.<sup>1</sup>
- (2) On 25 October 2017, Slovenia turned the notification into a pre-notification. In the course of the subsequent pre-notification contacts, Slovenia clarified a number of details concerning the amendments and prolongation.

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<sup>1</sup> Commission Decision C(2008) 8878 final of 13 January 2009, *State aid – N 325/2007 – Slovenia, Introduction of a tonnage tax scheme in favour of international maritime transport*. By way of corrigendum Decision C(2010) 7645 corr. Of 29 October 2010, *State aid N 188/2010 – Slovenia, Budget modification of the tonnage tax scheme in favour of international maritime transport*, the Commission approved a budget modification. Subsequently, the Commission was informed that the corrigendum Decision contained an error regarding the aid amount. This was corrected by way of Decision C(2010) 9509 final of 20 December 2010, *Case N 188/2010, Decision of 29 October 2010 – C(2010) 7645 – corrigendum, Budget modification of a tonnage tax scheme in favour of international maritime transport*.

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- (3) On 6 June 2018, Slovenia clarified that the draft amendments which were part of the pre-notification were rejected by the Parliament. For this reason, Slovenia limited its pre-notification only to a prolongation of the tonnage tax scheme.
- (4) On 12 November 2018, Slovenia formally notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), the intended prolongation of its existing tonnage tax scheme, registered under case number SA. 48949 (2018/N-2).
- (5) Slovenia attached to this notification a document containing commitments ("the 2018 commitments") to amend the tonnage tax legislation (notably as regards eligible activities and the taxation of dividends) to ensure full compliance with the Maritime Guidelines and the decisional practice of the Commission.
- (6) For reasons of urgency, Slovenia has exceptionally accepted that the decision be adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURES**

### **2.1. Introduction**

- (7) Currently, the maritime transport industry can benefit from tonnage taxation on the basis of the existing Tonnage Tax Act ("ZDTon").
- (8) In 2009, Slovenia amended<sup>2</sup> the ZDTon following the commitments it entered into in the Decision of 13 January 2009 ("the 2009 commitments").
- (9) The Slovenian authorities envisage to prolong the consolidated version of the ZDTon (which includes the 2009 commitments) for another ten years.

### **2.2. The Slovenian maritime sector**

- (10) The Resolution on the Maritime Strategy of Slovenia and the Resolution on the Transport Policy of the Republic of Slovenia aim at, on the one hand to consolidate the position of Slovenia as a naval State and on the other hand to provide better conditions for the development of maritime transport and its competitive presence in the world market.<sup>3</sup> Slovenia's geographical position makes that important European maritime traffic flows are crossing here.
- (11) For the reasons set out above, Slovenia requests a prolongation of the currently applicable tonnage tax scheme. According to the Slovenian authorities, not acting would lead to an irreparable loss of maritime knowledge and maritime jobs, not only in Slovenia, but also in the wider EU context.

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<sup>2</sup> By way of the *Decree to promulgate the Act amending the Tonnage Tax Act of 27 October 2009* ("ZDTon-A").

<sup>3</sup> The resolution can be found in the Official Gazette of the Republic of Slovenia No. 10/91 and No. 58/06.

### **2.3. Objectives and estimated aid impact**

- (12) With the implementation of the notified measures, Slovenia aims at:
- a. Increasing the competitiveness of Slovenian ship owners / shipping companies;
  - b. Preserving jobs and knowledge in the maritime sector.
  - c. Promoting the development of the maritime economy
  - d. Encouraging the recruitment of seafarers from the Member States
  - e. Encouraging the registration of ships into EU registers;
  - f. Promoting safe, efficient and environmentally friendly maritime transport;
  - g. Harmonizing the Slovenian tax legislation with that of the other coastal Member States
  - i. Contributing to the integration of the maritime economy in the EU, while maintaining the overall competitiveness of the fleet;

### **2.4. National legal basis**

- (13) The national legal basis is the Official consolidated version of the Tonnage Tax Act, ZDTon (Official Gazette of the Republic of Slovenia No 97/09, official consolidated text).<sup>4</sup> The Slovenian authorities will amend the Tonnage Tax act to reflect the 2018 commitments taken by the Slovenian authorities by the end of 2019.

### **2.5. Tonnage Tax Scheme**

- (14) Under Slovenian Corporate Income Tax Act -2 (hereinafter "CIT-2"),<sup>5</sup> every company is obliged to pay corporate income tax.
- (15) Under the notified prolongation of the ZDTon, a special tax regime will be applicable based on the amount of tonnage operated by ship owners, applicable to eligible maritime transport activities, exempting the companies concerned from the general obligation to pay corporate income tax irrespective of the companies' actual profits or loss. The Tonnage Tax Scheme is and will be an opt-in scheme, i.e. taxable persons will be free to decide whether they take advantage of the scheme or not.
- (16) As regards the financial impact of the prolongation of the Tonnage Tax Scheme, the Slovenian authorities estimate that the budget will be the same as for the scheme currently applicable, namely EUR 35.2 million over a ten-year period or EUR 3.52 million per year.

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<sup>4</sup> See: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5008> (accessed on 19/11/2018).

<sup>5</sup> Official Gazette of the Republic of Slovenia no. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16 and 69/17. See: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687> (accessed on 19/11/2018).

### 2.5.1. *Eligible undertakings*

- (17) Every undertaking (including its affiliate/permanent establishment) liable to pay corporate income tax under the CIT-2 (Article 6 and 6a ZDTon), active in maritime transport and international shipping (Article 8 point 1 ZDTon), which operates its ships strategically and commercially from Slovenia (Article 8 point 3 ZDTon) is eligible for the scheme.
- (18) As regards the requirement to operate ships strategically and commercially from Slovenia, the Slovenian authorities explained that the obligation to strategically and commercially manage the ships from Slovenia is not a breach of the internal market rules laid down in the TFEU since a situation in which an EEA ship owner would be taxable in Slovenia while they would not operate strategically or commercially there ships from Slovenia could not arise. The link to Slovenia arises from the CIT-2 and is simply there to limit the jurisdiction of the Slovenia tax authorities.
- (19) Once a company has decided to opt for the Tonnage Tax Scheme, the minimum period for remaining in this scheme is ten years (Article 7(1) ZDTon). In principle a company cannot withdraw from the tonnage tax regime before the expiry of the ten year period, unless it ceases to operate ships in international shipping. In such a case, the tonnage tax company cannot re-enter the tonnage tax regime before the date on which the ten-year term would expire (Article 14(1) ZDTon). If a company is excluded on an ex-officio basis by the tax authorities, it is ineligible to opt-in again for ten years (Article 14(5) ZDTon).
- (20) Once the application of the ZDTon has been terminated on an ex-officio basis the respective shipping company has to pay the difference between the tax payable under the CIT-2 and the tax that actually settled under the ZDTon, increased by the interest as stipulated in the national tax laws.

### 2.5.2. *Eligible activities*

- (21) The Tonnage Tax Scheme is only applicable in relation to eligible activities. This means that the tax base for any other activities is calculated in accordance with the general corporate income tax rules. Eligible activities comprise the core activity of maritime transport as well as ancillary activities. Currently, the ZDTon does not foresee a separation between revenues flowing from core activities and revenues flowing from ancillary activities.
- (22) The 2018 commitments of the Slovenian authorities include an amendment of Article 4 ZDTon in a way that the currently listed eligible income from shipping activities will be divided into core, ancillary and non-eligible income from shipping activities.
- (23) Revenues from core maritime activities will comprise notably:
  - Transport of goods and passengers by sea;
  - Chartering out the ship in whole or in part;
  - Chartering out the ship on bareboat terms to a related company;

- Sale of fuel that is already in the fuel tank upon delivery of a ship in charter;
- Sale of goods and services used by the crew members on board of a ship (e.g. cigarettes, goods for personal hygiene and internet services on board);
- Refunds from damages received from insurance companies for damaged or lost ships (e.g. if a ship loses cargo it will receive an indemnity payment from an insurance company);
- Positive exchange rate differences (possible revenues resulting from converting foreign currencies to euro) regarding revenues from the beneficiary's core maritime or ancillary activities;
- Positioning of ships (e.g. an empty ship is deployed from a port to take material on board that is being excavated in the middle of the sea whereby the deployment is done by the ship-owner, but the ship-owner charges the charterer for this).

(24) Revenues from ancillary activities will comprise notably:

- Demurrage<sup>6</sup> for ships and containers;
- Cleaning of the ship's holds (revenue from cleaning up the ships' hold, for example if the ship is in charter transporting coal but when it is returned to the ship-owner it will be used for transporting grain. The ship-owner will then charge the cost for cleaning done by itself to the charterer);
- Other activities indispensable for the provision of goods and passenger transportation by sea.

(25) Revenues from ineligible activities will comprise notably<sup>7</sup>:

- Transport by land in providing the "door-to-door" service;
- Sale of containers;

### 2.5.3. *Eligible vessels*

(26) Any seagoing ship with a gross tonnage of 100 or more which operates maritime transport in international shipping and holds valid certificates under the International Convention on Load Lines<sup>8</sup> or the International Convention for the

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<sup>6</sup> Demurrage is a charge payable when a chartered ship or space of containers are used longer than agreed or when goods are collected later than the agreed time after being taken off a chartered ship.

<sup>7</sup> Types of income from ineligible activities will either be listed or struck from the law.

<sup>8</sup> See: <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Load-Lines.aspx>

Safety of Life at Sea,<sup>9</sup> issued by the flag country is eligible for tonnage taxation. Moreover, those ships need to be strategically and commercially operated from the Republic of Slovenia, whereby it is not a prerequisite that the operation is done by the tonnage tax company (see also recital (17)).

- (27) Although a vessel, when fulfilling the conditions described above, can be included irrespective of the flag, it needs to fulfil the flag related terms and conditions in Article 10 ZDTon (see Section 3.3.8 below).
- (28) Furthermore, vessels used for towage or assistance at sea may be included under the tonnage tax scheme, provided that the vessel is flagged by the Republic of Slovenia, or another EU Member State<sup>10</sup> and provides its services outside the port area for no less than half of the time, whereby the operating time is the period within a tax period in which the tonnage tax company was operating this ship and the ship was actually employed in towage of, or assistance to ships at sea.

#### *2.5.4. Eligible revenue for each eligible vessel*

- (29) Revenue eligible for the calculation of the tax base under the Tonnage Tax Scheme is in principle the revenue generated by core maritime transport activities (see recital (22)).
- (30) However, other revenues, considered ancillary to the core maritime transport activities (see recital (24)) can also benefit from the Tonnage Tax Scheme. Currently, the ZDTon does not make a distinction between core and ancillary revenues; however as already explained, the Slovenian authorities will amend the law in order to make this distinction. In this light, the Slovenian authorities, as part of the 2018 commitments, will clarify in the law that the income from ancillary activities will not exceed 50% of the overall annual gross revenue (both ship-specific and other) of a beneficiary company.

#### *2.5.5. Time and voyage charter-in*

- (31) Time and voyage charterers are shipping companies which rent vessels with crew from other ship owners to satisfy the needs of their own clients. Under the Tonnage Tax Scheme, maritime transport activities carried out with chartered-in vessels (i.e. vessels rented from other ship owners) with crew are eligible under certain conditions, namely the total tonnage of ships chartered in by a tonnage tax company and included in the tonnage tax scheme may not exceed, for more than three consecutive tax periods, 75% of the total tonnage of all ships operated by the tonnage tax company and included in the tonnage tax scheme. Ships held by the tonnage tax company in charter from another tonnage tax company hereunder shall not be taken into the account of the 75% share (Article 11 ZDTon).

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<sup>9</sup> See: [http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-\(solas\),-1974.aspx](http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-(solas),-1974.aspx)

<sup>10</sup> Slovenia committed by letter of 12 November 2018 to amend the ZDTon in such a way that besides EU Member States also EEA Member States will be included.

### 2.5.6. Level of tonnage tax

- (32) The tax to be paid under the Tonnage Tax Scheme is based on the amount of net tonnes operated (Article 19 ZDTon):
- Up to 1,000 net tonnes: EUR 0.90 daily tax base for each 100 net tonnes,
  - Between 1,001 and 10,000 net tonnes: EUR 0.67 daily tax base for each 100 net tonnes,
  - Between 10,001 and 25,000 net tonnes: EUR 0.40 daily tax base for each 100 net tonnes,
  - Above 25,000 net tonnes: EUR 0.20 daily tax base for each 100 net tonnes.
- (33) The Slovenian authorities have explained that although the law refers to operating days, the standard practice is a calculation based on 365 days per year. There could only arise a difference between operating days and calendar days when the vessel is not performing any economic activities for reasons of lying-up, in dry-dock, repair, upgrading (re-processing) or rework.
- (34) For ships held in co-ownership, the daily tax shall be calculated by multiplying the daily tax base for the entire ship calculated according to the method described above, and the share held in co-ownership by the tonnage tax company is expressed as a fraction.
- (35) Applying the abovementioned tax rates to ships in full ownership, all vessels covered that are available to the company will be considered on the basis of calendar days. An example of the annual tax base for ships with a net tonnage between 1000 and 80000 will than look as follows:

Ship size in Net Tonnage (NT)	Daily tax rate	Calendar days	Annual tax base in EUR	Annual tax load in EUR (19% corporate tax rate)
1 000	9.00	365	<b>3 285.00</b>	<b>624</b>
10 000	69.30	365	<b>25 294.50</b>	<b>4 805</b>
20 000	109.30	365	<b>39 894.50</b>	<b>7 579</b>
25 000	129.30	365	<b>47 194.50</b>	<b>8 965</b>
40 000	159.30	365	<b>58 144.50</b>	<b>11 046</b>
50 000	179.30	365	<b>65 444.50</b>	<b>12 433</b>
80 000	239.30	365	<b>87 344.50</b>	<b>16 593</b>

### 2.5.7. Duration

- (36) The Tonnage Tax Scheme as amended on the basis of the 2018 commitments given by Slovenia will apply to tax periods that begin on or after 1 January 2019 and will remain in force for ten years, thus it will expire on 31 December 2028.

### **3. ASSESSMENT OF THE TONNAGE TAX SCHEME**

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

- (37) The Commission maintains its State aid assessment in recitals 46 to 50 of the Decision of 13 January 2009<sup>11</sup> and recitals 23 to 27 of the corrigendum Decision of 29 October 2010, which concluded that the scheme under examination constitutes State aid within the meaning of Article 107(1) TFEU.

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

- (38) The Commission takes note of the commitment of the Slovenian authorities to respect the stand-still obligation laid down in Article 108(3) TFEU and not to approve the prolongation until the Commission adopts a decision authorising the notified measure.

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

- (39) Pursuant to Article 107(3)(c) TFEU, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (40) The Commission has issued guidelines for the application of Article 107(3)(c) TFEU with regard to State aid to maritime transport ("Maritime Guidelines").<sup>12</sup> Aid in favour of the maritime sector must therefore be examined in the light of these guidelines.
- (41) The Commission considers that the ZDTon complemented by the 2018 commitments entered into by Slovenia is in line with the Maritime Guidelines and the Commission's decisional practice. This conclusion is based on the following findings:

##### *3.3.1. Objectives of the scheme*

- (42) According to their chapter 2.2, the Maritime Guidelines are intended to clarify what State aid schemes may be introduced in order to support the Union maritime interest, with the aim of: improving a safe, efficient, secure and environment friendly maritime transport, encouraging the flagging or re-flagging to Member States' registers, contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets, maintaining and improving maritime know-how and protecting and promoting employment for European seafarers, and contributing to the promotion of new services in the field of short sea shipping following the White Paper on Community transport policy.

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<sup>11</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical.

<sup>12</sup> Commission Communication C (2004) 43 – Community Guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3.



- (43) The Commission notes that the objectives of the Tonnage Tax Scheme as described in section 0 above are in line with the objectives as described in the Maritime Guidelines. The scheme aims at guaranteeing economic conditions in order to maintain the competitiveness of the European shipping sector, attract investments and achieve economic growth, increase the EEA's maritime fleet and create skilled maritime employment in the EEA.
- (44) The compatibility condition described in recital (42) is therefore fulfilled.

### 3.3.2. *Eligible vessels*

- (45) The vessels eligible under the tonnage tax scheme are described in recitals (26) to (28).

#### General requirement

- (46) Only genuine maritime transport activities are eligible for aid under the Maritime Guidelines. Maritime transport is defined as the transport of goods and persons by sea between ports, as well as between a port and an off-shore installation/structure<sup>13</sup> Activities which are not maritime transport, such as the activities carried out by fishing boats, exploitation of construction sites, and inland transport of containers, are not eligible.
- (47) The Commission notes that, as explained in recital (26), vessels eligible to benefit from the Tonnage Tax Scheme are vessels operating maritime transport activities.

#### Eligibility of towage vessels

- (48) In line with the Maritime Guidelines, activities carried out on towing vessels are only eligible to benefit from the tonnage tax scheme provided that 50% of the annual operations of the vessel's activities constitute maritime transport and only in respect of such transport activities. Eligible tugboats are only those registered in an EU/EEA State. Moreover, separate accounting for maritime transport activities and non-eligible other activities is required.
- (49) The Commission notes that such conditions are also respected with regard to towage vessels in the Slovenian tonnage tax regime (see recital (28) above).

#### Other vessels

- (50) The ZDTon explicitly excludes ships that do not operate in international shipping and ships that operate in:
- Military operations;
  - Fishing;
  - Catering purposes (floating hotels or restaurants);
  - Gambling facilities/casinos (floating casinos);

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<sup>13</sup> Cf. section 2 of the Maritime Guidelines – Scope and general objectives of the revised State aid guidelines.

- Telecommunications;
- Research activities;
- Recreation (leisure) and sports;
- Dredgers;
- Other purposes normally implemented on land.

#### Conclusion

(51) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

#### 3.3.3. *Eligible revenue for each eligible vessel*

(52) The Commission's decision-making practice distinguishes between:

- Core revenues from maritime transport activities: core revenues are revenues from ticket sales or fees for cargo transportation and, in case of passenger transportation, letting of cabins in the context of maritime voyage and sale of food and drinks for immediate consumption on board. These revenues are directly eligible for a tonnage taxation scheme.
- Non-core (ancillary) revenues (e.g. advertisements in vessels) from maritime activities: Ancillary revenues are other types of revenues which are frequently provided on board (especially in passenger transport) and which do not threaten to excessively distort competition with land-based providers, who are taxed according to the general rules of taxation. Examples of ancillary services 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. These revenues are eligible only insofar as they do not exceed 50% of the total gross revenues from the operation of a given vessel. In addition, land-based services, such as local excursions or road part transportation included in the overall service package must 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.
- Contracts non-customary and unrelated to maritime transport: such as acquisition of cars, livestock, property, are ineligible revenues (neither as core nor as ancillary revenues).

(53) As explained in recital (21), the ZDTon currently does not distinguish between revenues from core activities and revenues from ancillary activities. However, the Commission observes that, taking into account the 2018 commitments, Slovenia entered into on 12 November 2018, the notified scheme does distinguish appropriately between core, ancillary and ineligible activities and is therefore in line with the requirements listed above.

- (54) The Commission agrees that, even if these are not exhaustive lists, activities listed in recital (22) correspond to typical genuine core maritime transport activities, activities listed in recital (24) correspond to typical ancillary activities and activities listed in recital (25) are non-eligible activities.
- (55) Moreover, in relation to these requirements, the Commission notes that, as explained above in section 2.5.4, only revenue generated by maritime transport activities (core revenues) and revenues derived from activities ancillary to maritime transport (non-core revenues), only up to a maximum of 50% of the total income generated by maritime transport activities of each eligible ship, benefit from the Tonnage Tax Scheme.

#### 3.3.4. *Ring-fencing measures*

- (56) In order to enable the individual monitoring of revenues, expenses and losses from eligible and non-eligible activities and vessels, the companies opting for the Tonnage Tax Scheme are required to separate accounts accordingly.
- (57) The Commission notes that Article 22 of the ZDTon requires companies opting for the Tonnage Tax Scheme to organise their accounts in such a way as to enable separate accounting of eligible and ineligible activities. In light of the 2018 commitments (see recital (53)), Slovenia has confirmed that also ancillary activities will be accounted for separately. Revenues from ineligible activities will be taxed under the CIT-2 (Article 23 ZDTon).
- (58) In addition, Slovenia imposes the so called "arm's length principle" upon the companies electing for tonnage taxation. This is laid down in Article 21 ZDTon (Ascertainment of comparable market prices). In this light, the Slovenian authorities committed already in 2009<sup>14</sup> to verify intra-group transactions.<sup>15</sup>
- (59) According to the Slovenian authorities, the general reporting obligations of companies liable to taxation in Slovenia allow to monitor the compliance with their tax and accounting obligations. The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

#### 3.3.5. *Time and voyage charter-in*

- (60) Time and voyage charterers (as described above in section 2.5.5) are providers of maritime transport services and are covered by the Maritime Guidelines. However, such companies may only benefit from tonnage taxation if they contribute to an objective of the Maritime Guidelines, notably the development of the EEA flag or the preservation of EU know-how or a combination of the two.
- (61) This is the case, for instance, if (i) in addition to time/voyage chartered vessels equipped and manned by other companies, the tonnage tax beneficiary has in its fleet also vessels for which it ensures crew and technical management and provided such vessels constitute at least 20% of the total tonnage taxed fleet; (ii) the share of the vessels that are both non-EEA and time/voyage chartered does

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<sup>14</sup> I.e. the 2009 commitments.

<sup>15</sup> Paragraph 76 of the 2009 Decision

not exceed 75% of the beneficiary's fleet under tonnage tax, or (iii) at least 25% of the beneficiary's entire fleet is EEA-flagged. In all mentioned cases, the beneficiary stays under the separate obligation to maintain/increase the share of EEA-flagged tonnage of its own fleet (owned vessels or chartered in on a bareboat basis).

- (62) Based on Article 3(1) ZDTon, chartered-in vessels are eligible for tonnage taxation. Article 11(1) ZDTon provides that the total tonnage of ships chartered in by a tonnage tax company and included in the tonnage tax regime may not exceed, for more than three consecutive tax periods, 75% of total tonnage of all ships operated by the tonnage tax company and included in the tonnage tax regime. This is an even stricter requirement than described under (i) in the previous paragraph since Slovenia essentially requires that a minimum of 25% of the fleet cannot be chartered in (compared to the 20% mentioned in recital (61)). Moreover, the normal flag-related terms and conditions will apply to the tonnage tax company.
- (63) The Commission notes that there is an exemption laid down in Article 11(2) ZDTon, namely that ships held by the tonnage tax company in charter from another tonnage tax company shall not be taken into account when calculating the 75% share. This exception is not considered problematic given that the Slovenian authorities have clarified that this exception only applies to related (intra-group) companies.
- (64) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

#### 3.3.6. *Bareboat charter-out (BBO)*

- (65) In principle, BBO is not a maritime transport activity, but rather a leasing activity, as the main risk for the transport rests with the lessee and not the lessor. Unfair competition to the detriment of genuine leasing companies which do not benefit from tonnage tax but which come under the normal corporate tax has to be avoided. Therefore, BBO activities may only be allowed for tonnage tax to address a situation of temporary (maximum 3 years) overcapacity.
- (66) In order to be eligible for tonnage taxation, the Commission has considered in its decision practice that:
- bareboat chartering out contracts must be restricted to a maximum period of three years;
  - temporary excess capacity must be related to the beneficiary's own shipping services, i.e. excess capacity specifically acquired (bought or chartered) for chartering-out purposes is ineligible for tonnage taxation; and
  - at least 50% of the tonnage taxed fleet must still be operated by the tonnage tax beneficiary. EEA intra-group BBO transactions are eligible without any limitations.
- (67) Intra-group bareboat charter activities are always eligible without restrictions, since the beneficiary as a group performs maritime transport through an intra-group leasing structure.

- (68) In the present case, the Commission notes that, BBO activities under the ZDTon can only exist between a company and its affiliate companies. Article 3(2) ZDTon states that a company benefitting from tonnage taxation does not operate a ship if the ship was bareboat chartered out to an unrelated company, or to a related company which is not included in the tonnage tax scheme. Article 6a ZDTon contains the "all-in rule", meaning that if affiliated companies do not opt for tonnage taxation, the whole company is considered not to have elected for tonnage taxation. Consequently, BBO activities can only take place between affiliated companies which both opted for tonnage taxation. The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

### 3.3.7. Level of Tonnage Tax

- (69) 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".
- (70) The following table provides an overview of annual tax-load in EUR in schemes previously approved by the Commission and the Slovenian Tonnage Tax Scheme.

Fig. 1: Tonnage tax loads in schemes previously approved by the Commission and the Slovenian Tonnage Tax Scheme

Ship size (net tonnage)	Slovenia	Malta	Greece	Croatia	Cyprus
1 000	624	1 000	626	361	365
10 000	4 805	3 580	6 262	3 135	3 157
20 000	7 579	4 880	12 003	5 144	5 165
25 000	8 965	5 330	14 612	6 149	6 169
40 000	11 046	6 480	22 440	8 058	8 085
50 000	12 433	7 180	24 789	8 795	8 815
80 000	16 593	8 680	31 834	11 005	11 005

- (71) The table below provides an overview of tonnage tax rates in schemes previously approved by the Commission and the Slovenian Tonnage Tax Scheme.

Fig. 2: Tonnage tax rates in schemes previously approved by the Commission and the Slovenian Tonnage Tax Scheme.

Tonnage	Slovenia	Malta	Greece	Croatia	Cyprus
1 – 1 000	0.90	0.78	0.59	0.55	0.80
1 001 – 10 000	0.67	0.22	0.59	0.47	0.68

10 001 – 20 000	0.40	0.10	0.54	0.31	0.44
20 0001 – 25 000	0.40	0.07	0.49	0.31	0.44
25 001 – 40 000	0.20	0.06	0.49	0.19	0.28
40 001 – 50 000	0.20	0.05	0.22	0.11	0.16
50 001 – 80 000	0.20	0.04	0.22	0.11	0.16
80 001 >	0.20	0.04	0.1	0.11	0.16

(72) Based on the tax loads and tonnage tax rates as described above (for details see above section 2.5.6), the Commission observes that the tax loads and tax rates are fairly in line with tonnage tax schemes previously approved by the Commission. The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's case practice in this respect.

### 3.3.8. *Flag link requirement & national flagging restrictions*

(73) In line with chapter 3.1 of the Maritime Guidelines, beneficiaries must have a certain share of their fleet under EU/EEA flags. If this share is less than 60%, beneficiaries must in principle at least maintain or restore the share they had when the Maritime Guidelines entered into force. National flagging restrictions according to which the benefits of the scheme are restricted to a certain level of national flagging (and not EEA flagging) infringe internal market rules and cannot be approved.

(74) The Commission notes that, pursuant to Article 8 cf. 9(2) ZDTon the scheme covers vessels irrespective of their flag operated by companies subject to taxation in Slovenia. The Commission further notes that the flag link rules as set out by the Maritime Guidelines remain respected in particular as regards the obligation to maintain or increase the share of EU/EEA-flagged vessels.

(75) With regard to towage vessels, the Commission notes that it is required to fly the flag of the Republic of Slovenia or another or an EEA Member State.<sup>16</sup>

(76) The Tonnage Tax Scheme is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

### 3.3.9. *Aid cumulation /Aid ceiling*

(77) In line with Chapter 11 of the Maritime aid Guidelines, the total aid for the benefit of shipping companies, independently of the form of the aid, should not provide a higher benefit than the full exemption from taxes and social contributions of shipping activities and seafarers.

<sup>16</sup> Pursuant to Article 9(3) point 1 of the ZDTon. Also, Slovenia committed by letter of 12 November 2018 to amend the ZDTon in such a way that besides EU Member States also EEA Member States will be included.

- (78) The Slovenian authorities have confirmed that the cumulation rules laid down in Chapter 11 of the Maritime Guidelines are respected. In particular since Slovenia has a centralized system for monitoring and assessing the granting of State aid. On the basis of the State aid Act<sup>17</sup> and the Decree on data submission and on the reporting of granted state aid and de minimis aid<sup>18</sup> all aid must be regularly reported to the database called State aid information system which is managed by the Ministry of Finance. All aid granted to an individual recipient is recorded in this database. Before any new aid is granted, the grantor is obliged to check the amount and for which purpose the potential beneficiary has already received aid before. On this basis and following a statement from the potential beneficiary, the aid grantor decides how much aid may be granted to the recipient.
- (79) The Tonnage Tax Scheme thus is in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

*3.3.10. Preferential fiscal treatment of capital gains and dividends related to shares in shipping companies as well as maritime intermediaries.*

- (80) As set out in section 3.1 of the Maritime Guidelines the fiscal advantages must be restricted to shipping activities and normal tax levels should be preserved for the remuneration of shareholders and directors. Therefore, income related to dividends paid by shipping companies and capital gains arising from the sale of shares in shipping companies do not constitute income arising from shipping activities, but rather income arising for the shareholders from their investment activities. There is no compatibility basis which would justify preferential tax treatment of income from such investment activities.
- (81) Currently, the ZDTon provides for a different treatment of dividends received by shipping companies. However the 2018 commitments of Slovenia include an amendment of Article 4 of the ZDTon with respect to the profit or income from received dividends from shipping companies in a way that any specific treatment of dividends under the tonnage tax regime will be abolished and that it will be ensured that shareholders of shipping companies covered by the tonnage tax regime will be treated exactly as any other shareholder under the CIT-2.
- (82) Considering the above, the Commission concludes that the Tonnage Tax Scheme regarding the taxation of dividends is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.
- (83) Furthermore, the ZDTon does not provide for special rules on capital gains arising from the sale of shares in shipping companies.

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<sup>17</sup> Official Gazette of the Republic of Slovenia no. 37/2004. See: [http://www.mf.gov.si/si/delovna\\_podrocja/drzavne\\_pomoci/predpisi\\_in\\_pravila\\_ki\\_veljajo\\_na\\_podrocju\\_drzavnih\\_pomoci/slovenski\\_predpisi/](http://www.mf.gov.si/si/delovna_podrocja/drzavne_pomoci/predpisi_in_pravila_ki_veljajo_na_podrocju_drzavnih_pomoci/slovenski_predpisi/) (Accessed on 19/11/2018).

<sup>18</sup> Official Gazette of the Republic of Slovenia no. 61/2004. See: [http://www.mf.gov.si/si/delovna\\_podrocja/drzavne\\_pomoci/predpisi\\_in\\_pravila\\_ki\\_veljajo\\_na\\_podrocju\\_drzavnih\\_pomoci/slovenski\\_predpisi/](http://www.mf.gov.si/si/delovna_podrocja/drzavne_pomoci/predpisi_in_pravila_ki_veljajo_na_podrocju_drzavnih_pomoci/slovenski_predpisi/) (Accessed on 19/11/2018).

- (84) Therefore, the Commission concludes that the Tonnage Tax Scheme is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

### *3.3.11. Tax liabilities when opting-in to the Tonnage tax scheme*

- (85) Outside the Tonnage Tax scheme, a ship may benefit from depreciation which reduces the tax base for the income tax of the related shipping company. Such depreciation does not exist under the Tonnage Tax scheme as there is no taxation based on revenues. Therefore, when opting-in to the Tonnage Tax scheme such tax liabilities would have to be settled or they would constitute a separate State aid measure which would be acceptable only within the limits of the aid ceiling fixed in the Maritime Guidelines.
- (86) The Commission notes that the ZDTon does not contain any provision specifically governing the depreciation of vessels before opting-in to the Tonnage Tax scheme. The Slovenian authorities have explained that instead the CIT-2 applies. This means that all ships shall be measured either at cost model or the "fair value" model. Moreover, no accelerated depreciation method is permitted under the CIT-2.
- (87) Considering the above, the Commission considers that if a company were to opt-in to the Slovenian Tonnage Tax Scheme it would not comprise an additional State aid measure as the Slovenian tax system does not allow any special depreciation rules for ships. The Tonnage Tax Scheme is thus in line with the Maritime Guidelines and the Commission's decisional practice in this respect.

### *3.3.12. Duration & evaluation*

- (88) According to the case-law, aid schemes cannot be approved as compatible under Article 107(3) TFEU for an unlimited duration.<sup>19</sup> Schemes must be subject to a regular review of their effectiveness and impact.
- (89) The Tonnage Tax Scheme will remain in force for ten years. The present Decision is directly applicable in the Slovenian national law and is valid till 31 December 2028 (see recital (36)).
- (90) Pursuant to section 12 of the Maritime Guidelines, the Commission further notes that an evaluation of the regime will be carried out after three years. In addition, Slovenia has indicated, in order to enable the Commission to monitor the aid that it will annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589<sup>20</sup>, maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

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<sup>19</sup> Case C-67/09 P *Nuova Agricast*, EU:C:2010:607, para. 80.

<sup>20</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).



- (91) Since this is a fiscal aid scheme, Slovenia has also indicated that it will undertake to put in place an appropriate control mechanism, by which it regularly verifies (for example once per fiscal year), at least ex post and on a sample basis, that all compatibility conditions are met, and to impose sanctions in case of fraud. In order to enable the Commission to monitor fiscal aid schemes, Slovenia undertakes to maintain detailed records of the controls for at least 10 years from the date of the controls, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

### *3.3.13. Conclusion on compatibility*

- (92) Based on the foregoing, the Commission considers that the Tonnage Tax Scheme fulfils all the necessary criteria under the Maritime Guidelines and its decisional practice. Therefore, the Commission concludes that the Tonnage Tax Scheme is a State aid measure compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## **4. CONCLUSION**

The Commission concludes that the Tonnage Tax Scheme, as assessed above, constitutes State aid pursuant to Article 107(1) TFEU which is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## **5. DECISION**

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

The Commission notes that for reasons of urgency, Slovenia exceptionally accepts the adoption and notification of the decision in English.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

