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COUNCIL

LIST OF APPOINTMENTS MADE BY THE COUNCIL

(November and December 2003) (social field)

(2004/C 13/01)

Committee	End of term of office	Publication in OJ	Person replaced	Resignation	Member/ Alternate	Category	Country	Person appointed	Affiliation	Date of Council Decision
Advisory Committee on Freedom of Movement for Workerss	6.5.2004	C 119, 22.5.2002	Mr Enrico MORA	Resignation	Member	Government	Italy	Mr. Augusto VACCARO	Ministero degli Affari Esteri	4.11.2003
Advisory Committee on Vocational Training	29.9.2004	C 243, 9.10.2002	Mr Bert CLOUGH	Resignation	Member	Workers	United Kingdom	Mr Sean BAMFORD	TUC	17.11.2003
Advisory Committee on Vocational Training	29.9.2004	C 243, 9.10.2002	Ms Fiorina LUDOVISI	Resignation	Member	Employers	Italy	Mr Claudio GENTILI	CONFINDUSTRIA	1.12.2003
Advisory Committee on Social Security for Migrant Workers	22.9.2004	C 245, 11.10.2002	Mr Enrico MORA	Resignation	Member	Government	Italy	Mr Augusto VACCARO	Ministero degli Affari Esteri	4.11.2003
Advisory Committee on Social Security for Migrant Workers	22.9.2004	C 245, 11.10.2002	Mr António VINAGRE SOUSA GRAÇA	Resignation	Alternate	Government	Portugal	Ms Elisabete SOUSA SILVEIRA	DRISS	1.12.2003
Administrative Board of the European Foundation for the Improvement of Living and Working Conditions	18.10.2004	C 327, 20.11.2001	Ms Cristina GALACHE MATABUENA	Resignation	Member	Government	Spain	Ms Pilar GONZÁLEZ BAYO	Ministerio de Trabajo y Asuntos Sociales	24.11.2003
Administrative Board of the European Agency for Safety and Health at Work	2.6.2005	C 161, 5.7.2002	Mr Andreas HORST	Resignation	Member	Government	Germany	Ms Anette RÜCKERT	Bundesministerium für Wirtschaft und Arbeit	24.11.2003

COMMISSION

Euro exchange rates [1]

16 January 2004

(2004/C 13/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2493	LVL	Latvian lats	0,667
JPY	Japanese yen	132,47	MTL	Maltese lira	0,4294
DKK	Danish krone	7,4486	PLN	Polish zloty	4,7125
GBP	Pound sterling	0,6884	ROL	Romanian leu	41 139
SEK	Swedish krona	9,1902	SIT	Slovenian tolar	237,55
CHF	Swiss franc	1,567	SKK	Slovak koruna	40,77
ISK	Iceland króna	87,37	TRL	Turkish lira	1 672 478
NOK	Norwegian krone	8,601	AUD	Australian dollar	1,6257
BGN	Bulgarian lev	1,9555	CAD	Canadian dollar	1,6188
CYP	Cyprus pound	0,58672	HKD	Hong Kong dollar	9,702
CZK	Czech koruna	32,709	NZD	New Zealand dollar	1,8678
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,1243
HUF	Hungarian forint	267,07	KRW	South Korean won	1 481,79
LTL	Lithuanian litas	3,4529	ZAR	South African rand	9,1835

[1] *Source:* reference exchange rate published by the ECB.

Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport

(2004/C 13/03)

1. INTRODUCTION

The White Paper 'European transport policy for 2010: time to decide' stresses the vital importance of maritime transport services for the Community economy. 90 % of all trade between the Community and the rest of the world is transported by sea. Short sea shipping accounts for 69 % of the volume of goods transported between the Member States (this percentage is 41 % if domestic transport is included). Community maritime transport and its related activities remains one of the most important in the world.

The shipping companies of the Member States still manage about a third of the world fleet today. The accession of Cyprus and Malta [1] in 2004 will increase still further the Union's share of shipping, as the shipping registers of these two countries currently account for about 10 % of world tonnage.

Since the 1970s the European fleet has been faced with competition from vessels registered in third countries which do not take much care to observe social and safety rules in force at international level.

The lack of competitiveness of Community-flagged vessels was recognised at the end of the 1980s and, in the absence of harmonised European measures, several Member States adopted different arrangements for aiding maritime transport. The strategies adopted and the budgets allocated to support measures differ from one Member State to the other in reflection of the attitude of those States to public aid or the importance they attach to the maritime sector.

In addition, to encourage the re-registering of vessels, Member States have relaxed rules concerning crews, notably through the creation of second registers.

Second registers comprise, firstly, 'offshore registers' belonging to territories which have a greater or lesser autonomy in relation to the Member State, and secondly, 'international registers', attached directly to the State which created them.

In spite of the efforts made, a large part of the Community fleet continues to be registered under the flags of third countries. This is because the registers of third countries which apply open registration policies — some of which are called 'flags of convenience' — have continued and are still continuing to enjoy a significant competitive edge over the registers of Member States.

Aid to the shipping industry since 1989

In the light of the differences between the aid systems adopted by Member States faced with more intense competition from non-Community flagged vessels, in 1989 the Commission defined its first guidelines on this subject to ensure a certain convergence between the actions of the Member States. This method nevertheless proved to be ineffective and the decline of Community fleets continued. The guidelines were accordingly reviewed, leading to a 1997 communication defining new Guidelines on State aid to maritime transport [2].

The major development in recent years concerning support measures from the Member States for maritime transport is the widespread extension in Europe of flat rate tonnage taxation systems ('tonnage tax'). Tonnage tax entered into force very early in Greece and was progressively extended to the Netherlands (1996), to Norway (1996), to Germany (1999), to the United Kingdom (2000), to Denmark, to Spain and to Finland (2002) and to Ireland (2002). Belgium and France also decided to adopt it in 2002, while the Italian Government is envisaging this possibility.

Results of measures proposed by Member States and approved by the Commission compared with the general objectives of the 1997 revised Guidelines

(a) *Trends of the Community-flagged fleet (competitiveness of the fleet)*

According to the replies provided by the Member States mid-2002 to the Commission's questionnaire and to the most recent statistical data [3], Member States which have introduced aid measures, particularly in the form of tax relief, have obtained re-registration under the national flag of a significant volume of tonnage in all the registers taken together. In percentage terms, the fleet as entered in the registers of the Member States increased as follows: the number of vessels by 0,4 % on average per year, tonnage by 1,5 % and container ships by 12,4 %. Even if, in the case of the first registers, the number of units entered declined practically everywhere in the period 1989 to 2001, these figures can be viewed as a reversal of the trend, observed up to 1997, of abandoning Community flags.

[1] The sixth and the fifth world registers of ships in terms of tonnage respectively (vessels of more than 300 gt. Source: ISL 2001).

[2] Community guidelines on State aid to maritime transport (97/C 205/05) (OJ C 205, 5.7.1997, p. 5).

[3] ISL, Shipping Statistics 2001.

During the same period, however, the share of Member State registers in total world tonnage fell slightly. While world shipping increased, the growth of the Community-managed fleet registered under third-country flags was faster than that of the fleet registered under the flags of the Member States.

(b) *Employment trends*

According to the most recent estimates, the number of seafarers on board Community-flagged vessels fell from 188 000 in 1996 to approximately 180 000 in 2001 [1]. The total number of Community nationals employed on board vessels flying Community flags is currently about 120 000, a figure which is 40 % lower than that of 1985, while the number of nationals of third countries employed on board Community vessels has gone up from 29 000 in 1983 to approximately 60 000 today. When assessing the drop in the total number of seafarers, the following factors must be taken into account:

— first, productivity per vessel has continued to increase. Accordingly, a smaller crew makes it possible to transport an equal if not higher volume than that carried in the past,

— secondly, the Community-flagged fleet was renewed in the period 1997 to 2001. The average age of vessels went down from 22,9 years to 17,2 years. 35 % of the fleet in service on 1 January 2001 had been built in the period 1996 to 2000. New vessels, of more advanced technology, need better trained but smaller crews.

Notable differences between the Member States in the employment rate of Community seafarers are nevertheless apparent. However, nothing in these figures indicates a reversal of the trend whereby the Community-flagged fleet depends more and more on third-country seafarers. This trend was pointed out by the Commission in 2001 in its Communication on the training and recruitment of seafarers [2].

(c) *Contribution to economic activity as a whole*

Maritime industries are inextricably linked with maritime transport. This association is a strong argument in favour of positive measures whose aim is to maintain a fleet dependent on Community shipping. Since maritime transport is one of the links in the chain of transport in general and in the chain of the maritime industries in particular, measures seeking to maintain the competitiveness of the European fleet also have repercussions on investments on land in maritime-related industries [3] and on the contribution of maritime transport to the economy of the Community as a whole and to jobs in general.

The significance of shipping and the whole maritime cluster varies considerably with the countries under consideration. However, the importance of the European maritime cluster and its direct economic impact can be clearly illustrated by the following figures: 1,550 million direct employees, a turnover of EUR 160 billion in 1997 (about 2 % of GDP in the Community) [4]. Data on Denmark (3 % of the GDP generated by the maritime cluster), Greece (2,3 %) and the Netherlands (2 %) can be taken as a valid example.

In this context, therefore, it is not insignificant to note that the fleet managed by European operators based in the Community has stayed at a level of around 34 % of world tonnage, while the latter increased by 10 % during the period. Given the mobility of the maritime industry and the facilities offered by third countries, one may conclude that support measures for maritime transport may contribute to avoiding widespread displacement of allied industries.

To sum up, it can be affirmed that, where measures in line with the 1997 Guidelines have been adopted, the structural decline of the Community registers and the Community's fleet has been halted and the objectives set by the Commission have been attained, at least in part.

The share of open registers in world tonnage continued, however, to increase during the period, rising from 43 % in 1996 to 54 % in 2001, and nothing indicates any significant reversal of the trend whereby the fleet had, and is continuing to have, increasing recourse to seafarers from third countries. The campaign undertaken in recent years must be pursued but it must be better targeted. Measures to promote Community seafarers must in particular be the subject of more active monitoring.

The results of the measures taken by the Member States and authorised by the Commission will have to be systematically analysed.

As a consequence, and even though as a matter of principle operating aid should be exceptional, temporary, and degressive, the Commission estimates that State aid to the European shipping industry is still justified and that the approach followed by the 1997 Guidelines was correct. This communication is therefore based on the same basic approach.

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(1) Total combined number of Community and non-Community seafarers.

(2) Communication from the Commission on the training and recruitment of seafarers of 6 April 2001, COM(2001) 188 final.

(3) These activities include port services, logistics, the construction, repair, maintenance, inspection and classification of vessels, ship management and brokerage, banking activities and international financial services, insurance, advice and professional services.

(4) Study undertaken by the European Commission, DG Enterprise (published in the Europa internet site).

2. SCOPE AND GENERAL OBJECTIVES OF THE REVISED STATE AID GUIDELINES

This communication — replacing the 1997 Guidelines — aims at setting the parameters within which State aid to maritime transport will be approved, pursuant to Community State aid rules and procedures, by the Commission under Article 87(3)(c) and/or Article 86(2) of the Treaty.

Aid schemes should not be conducted at the expense of other Member States' economies and must be shown not to risk distortion of competition between Member States to an extent contrary to the common interest. State aid must always be restricted to what is necessary to achieve its purpose and be granted in a transparent manner. The cumulative effect of all aid granted by State authorities (including national, regional and local levels) must always be taken into account.

These Guidelines are applicable to 'maritime transport' activities as defined in Regulation (EEC) No 4055/86 [1] and in Regulation (EEC) No 3577/92 [2], that is to say, to the 'transport of goods and persons by sea'. They also, in specific parts, relate to towage and dredging.

2.1. Scope of revised State aid guidelines

These Guidelines cover any aid granted by Member States or through State resources in favour of maritime transport. This includes any financial advantage, conferred in any form whatsoever, funded by public authorities (whether at national, regional, provincial, departmental or local level). For these purposes, 'public authorities' may include public undertakings and State-controlled banks. Arrangements whereby the State guarantees loans or other funding by commercial banks may also fall within the definition of aid. The Guidelines draw no distinction between types of beneficiary in terms of their legal structure (whether companies, partnerships or individuals), nor between public or private ownership, and any reference to companies shall be taken to include all other types of legal entity.

These guidelines do not cover aid to shipbuilding (within the meaning of Council Regulation (EC) No 1540/98 [3] or any subsequent instrument). Investments in infrastructure are not normally considered to involve State aid within the meaning of Article 87(1) of the Treaty if the State provides free and equal access to the infrastructure for the benefit of all operators concerned. However, the Commission may examine such investments if they could directly or indirectly benefit particular shipowners. Finally, the Commission has established the principle that no State aid is involved where public authorities contribute to a company on a basis that would be acceptable to a private investor operating under normal market-economy conditions.

2.2. General objectives of revised State aid guidelines

The Commission has stressed that increased transparency of State aid is necessary so that not only national authorities in the broad sense but also companies and individuals are aware of their rights and obligations. These Guidelines are intended to contribute to this and to clarify what State aid schemes may be introduced in order to support the Community 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.

State aid may generally be granted only in respect of ships entered in Member States' registers. In certain exceptional cases, however, aid may be granted in respect of ships entered in registers under point (3) of the Annex, provided that:

— they comply with the international standards and Community law, including those relating to security, safety, environmental performance and on-board working conditions,

— they are operated from the Community,

[1] 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).

[2] 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).

[3] OJ L 202, 18.7.1998, p. 1.

— their shipowner is established in the Community and the Member State concerned demonstrates that the register contributes directly to the objectives mentioned above.

Additionally, flag-neutral aid measures may be approved in certain exceptional cases where a benefit to the Community is clearly demonstrated.

3. FISCAL AND SOCIAL MEASURES TO IMPROVE COMPETITIVENESS

3.1. Fiscal treatment of shipowning companies

Many third countries have developed significant shipping registers, sometimes supported by an efficient international services infrastructure, attracting shipowners through a fiscal climate which is considerably milder than within Member States. The low-tax environment has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation. It should be emphasised that there are no effective international rules at present to curb such tax competition and few administrative, legal or technical barriers to moving a ship's registration from a Member State's register. In this context, the creation of conditions allowing fairer competition with flags of convenience seems the best way forward.

The question of fiscal competition between Member States should be addressed. At this stage, there is no evidence of schemes distorting competition in trade between Member States to an extent contrary to the common interest. In fact, there appears to be an increasing degree of convergence in Member States' approaches to shipping aid. Flagging out between Member States is a rare phenomenon. Fiscal competition is mainly an issue between Member States on the one hand and third countries on the other, since the cost savings available to shipowners through third country registers are considerable in comparison to the options available within the Community.

For this reason, many Member States have taken special measures to improve the fiscal climate for shipowning companies, including, for instance, accelerated depreciation on investment in ships or the right to reserve profits made on the sale of ships for a number of years on a tax-free basis, provided that these profits are reinvested in ships.

These tax relief measures which apply in a special way to shipping are considered to be State aid. Equally, the system of replacing the normal corporate tax system by a tonnage tax is a State aid. 'Tonnage tax' means that the shipowner pays an amount of tax linked directly to the tonnage operated. The tonnage tax will be payable irrespective of the company's actual profits or losses.

Such measures have been shown to safeguard high quality employment in the on-shore maritime sector, such as management directly related to shipping and also in associated activities (insurance, brokerage and finance). In view of the importance of such activities to the economy of the Community and in support of the objectives stated earlier, these types of fiscal incentive can generally be endorsed. Further, safeguarding quality employment and stimulating a competitive shipping industry established in a Member State through fiscal incentives, taken together with other initiatives on training and enhancement of safety, will facilitate the development of Community shipping in the global market.

The Commission is aware that the income of shipowners today is often obtained from the operation of ships under different flags — for instance, when making use of chartered vessels under foreign flags or by making use of partner vessels within alliances. It is also recognised that the incentive for expatriation of management and ancillary activities would continue if the shipowner obtained a significant financial benefit from maintaining different establishments and accounting separately for Community flag earnings and other earnings. This would be the case, for example, if the non-Community flag earnings were liable either to the full rate of corporate taxation in a Member State or to a low rate of tax overseas if overseas management could be demonstrated.

The objective of State aid within the common maritime transport policy is to promote the competitiveness of the Community fleets in the global shipping market. Consequently, tax relief schemes should, as a rule, require a link with a Community flag. However, they may also, exceptionally, be approved where they apply to the entire fleet operated by a shipowner established within a Member State's territory liable to corporate tax, provided that it is demonstrated that the strategic and commercial management of all ships concerned is actually carried out from within the territory and that this activity contributes substantially to economic activity and employment within the Community. The evidence furnished by the Member State concerned to demonstrate this economic link should include details of vessels owned and operated under Community registers, Community nationals employed on ships and in land-based activities and investments in fixed assets. It must be stressed that the aid must be necessary to promote the repatriation of the strategic and commercial management of all ships concerned in the Community and, in addition, that the beneficiaries of the schemes must be liable to corporate tax in the Community. In addition, the Commission would request any available evidence to show that all vessels operated by companies benefiting from these measures comply with the relevant international and Community safety standards, including those relating to onboard working conditions.

As was argued in the above paragraph, it should not be forgotten that, as a matter of principle, tax relief schemes require a link with the flag of one of the Member States. Before aid is exceptionally granted (or confirmed) to fleets which also comprise vessels flying other flags, Member States should ensure that beneficiary companies commit themselves to increasing or at least maintaining under the flag of one of the Member States the share of tonnage that they will be operating under such flags when this Communication becomes applicable. Whenever a company controls ship operating companies within the meaning of the Seventh Council Directive 83/349/EEC [1] (Article 1), the abovementioned tonnage share requirement will have to apply to the parent company and subsidiary companies taken together on a consolidated basis. Should a company (or group) fail to respect that requirement, the relevant Member State should not grant further tax relief with respect to additional non-Community flagged vessels operated by that company, unless the Community-flagged share of the global tonnage eligible for tax relief in that Member State has not decreased on average during the reporting period referred to in the next paragraph. The Member State must inform the Commission of the application of the derogation. The Community-tonnage share requirement set out in this paragraph does not apply to undertakings operating at least 60 % of their tonnage under a Community flag.

In all cases, where fiscal schemes have been approved on the above exceptional basis and in order to allow the Member State concerned to prepare, every three years, the report required under Chapter 12 ('Final Remarks'), recipients must provide the Member State concerned with proof that all the conditions for the derogation from the flag link have been fulfilled during the period. Furthermore, evidence must be provided that, in the case of the beneficiary fleet, the tonnage share requirement laid down in the previous paragraph has been observed and that each vessel of that fleet complies with the relevant international and Community standards, including those relating to security, safety, environmental performance and on-board working conditions. Should recipients fail to provide such evidence, they will not be allowed to continue to benefit from the tax scheme.

It is also of interest to stipulate that whereas Community-based shipping companies are the natural recipients of the above tax schemes, certain ship management companies established in the Community may also qualify under the same provisions. Ship management companies are entities providing different kind of services to shipowners, such as technical survey, crew recruiting and training, crew management, and vessel operation. In some cases ship managers are assigned both technical and crewing management of vessels. In this case they act as classic 'shipowners' as far as transport operations are concerned. Moreover, as in the case of the shipping industry, this sector is experiencing strong and increasing competition at an international level. For these reasons, it seems appropriate to extend the possibility of tax relief to that category of ship managers.

Ship management companies may qualify for aid only in respect of vessels for which they have been assigned the entire crew and technical management. In particular, in order to be eligible, ship managers have to assume from the owner the full responsibility for the vessel's operation, as well as take over from the owner all the duties and responsibilities imposed by the ISM Code [2]. Should ship managers also provide other specialised services, even related to vessel operation, separate accounting for such activities, which do not qualify for the tax relief schemes, should be ensured. The requirement regarding Member States' flag share described above also applies to ship management companies [3].

These guidelines apply only to maritime transport. The Commission can accept that the towing at sea of other vessels, oil platforms, etc. falls under that definition.

The Commission has, however, become aware that in certain cases Member States allow tugboats which are designed for work at sea to benefit from aid even though they are not active at sea, or rarely so. Thus it is useful to state in these guidelines which line the Commission has taken and will take on this point.

'Towage' is covered by the scope of the Guidelines only if more than 50 % of the towage activity effectively carried out by a tug during a given year constitutes 'maritime transport'. Waiting time may be proportionally assimilated to that part of total activity effectively carried out by a tug which constitutes 'maritime transport'. It should be emphasised that towage activities which are carried out *inter alia* in ports, or which consist in assisting a self-propelled vessel to reach port do not constitute 'maritime transport' for the purposes of this communication. No derogation from the flag link is possible in the case of towage.

Similarly in the case of dredging, the experience gained during the recent years suggests that some points should be made.

'Dredging' activities are, in principle, not eligible for aid to maritime transport. However, fiscal arrangements for companies (such as tonnage tax) may be applied to those dredgers whose activity consists in 'maritime transport' — that is, the transport at deep sea of extracted materials — for more than 50 % of their annual operational time and only in respect of such transport activities. Eligible dredgers are only those registered in a Member State (no derogation from the flag link is possible). In such cases, separate accounting for maritime transport activities is required [4].

[1] OJ L 193, 18.7.1983, p. 1.

[2] 'ISM Code', International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the International Maritime Organization (IMO) by resolution A.741(18).

[3] The Commission will examine the effects of these provisions on ship management after three years of implementation of this communication.

[4] The ships used by these operators also extract or dredge materials which they carry afterwards. Extraction or dredging as such do not qualify for State aid to maritime transport.

Finally, the method of assessing tonnage tax systems notified up to now has consisted of the following steps: a virtual profit for shipowners has been calculated by applying a notional profit rate to their tonnage; national corporate tax has been applied to the amount so determined. The resulting amount is the 'tonnage tax' to be paid.

The notional profit rates provided for by Member States have been homogeneous up to now. However, since corporate tax rates may vary significantly across the Community, the tonnage taxes to be paid for the same tonnage might be very uneven in the different Member States. In order to keep the present equitable balance, 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 all cases, the benefits of schemes must facilitate the development of the shipping sector and employment in the Community interest. Consequently, the fiscal advantages mentioned above must be restricted to shipping activities; hence, in cases where a shipowning company is also engaged in other commercial activities, transparent accounting will be required in order to prevent 'spill-over' into non-shipping activities. This approach would help Community shipping to be competitive, with tax liabilities comparable to levels applying elsewhere in the world, but would preserve a Member State's normal tax levels for other activities and personal remuneration of shareholders and directors.

3.2. **Labour-related costs**

As was mentioned earlier, maritime transport is a sector experiencing fierce international competition. Support measures for the maritime sector should, therefore, aim primarily at reducing fiscal and other costs and burdens borne by Community shipowners and Community seafarers towards levels in line with world norms. They should directly stimulate the development of the sector and employment, rather than provide general financial assistance.

In keeping with these objectives, the following action on employment costs should be allowed for Community shipping:

— reduced rates of contributions for the social protection of Community seafarers employed on board ships registered in a Member State,

— reduced rates of income tax for Community seafarers on board ships registered in a Member State.

For the purposes of this point, 'Community seafarers' is defined as:

— Community/EEA citizens, in the case of seafarers working on board vessels (including ro-ro ferries [1]) providing scheduled passenger services between ports of the Community,

— all seafarers liable to taxation and/or social security contributions in a Member State, in all other cases.

The previous 1997 Guidelines allowed such reductions for all seafarers working on board vessels registered in a Member State and subject to tax and or social security contributions in a Member State. However, since then it has become clear that pressure by international competition on European shipowners is very strong in the case of international freight transport, while it is lighter in the case of intra-Community scheduled passenger transport. Boosting the competitiveness of European shipping industry is therefore a prior objective of aid in the former case. Preventing Member States from granting tax relief to all seafarers in this case would have very negative effects on the competitiveness of European shipowners, which could be encouraged to flag-out. At the same time it has been noticed that employment of European citizens is significant, in percentage terms and in numbers, in intra-Community scheduled passenger transport. Protection of employment in the Community is therefore a priority for aid in this case. For internal fiscal reasons some Member States prefer not to apply reduced rates as mentioned above, but instead may reimburse shipowners — partially or wholly — for the costs arising from these levies. Such an approach may generally be considered equivalent to the reduced-rate system as described above, provided that there is a clear link to these levies, no element of overcompensation, and that the system is transparent and not open to abuse.

For the maritime part of towage and dredging activities (maritime transport of materials), aid in favour of the employment of Community seafarers may be granted by analogy to the rules contained in this point, but only if the aid relates to Community seafarers working on board seagoing, self-propelled tugs and dredgers, registered in a Member State, carrying out maritime transport at sea for at least 50 % of their operational time [2].

Finally, it should be recalled that aid to employment is covered by the block exemption provided for by Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment [3], which also applies to maritime transport.

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[1] See Article 2, point (a), of Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1).

[2] Thus dredging activities carried out, *inter alia*, mainly in ports will not qualify for aid in favour of employment of Community seafarers.

[3] OJ L 337, 13.12.2002, p. 3.

4. CREW RELIEF

Aid for crew relief tends to reduce the costs of employing Community seafarers, especially those on ships operating in distant waters. Aid, which is subject to the ceiling (as set out in Chapter 11), may, therefore, be granted in the form of payment or reimbursement of the costs of repatriation of Community seafarers working on board ships entered in Member States' registers.

5. INVESTMENT AID

Subsidies for fleet renewal are not common in other transport modes such as road haulage and aviation. Since they tend to distort competition, the Commission has been reluctant to approve such schemes, except where they form part of a structural reform leading to reductions in overall fleet capacity.

Investment must comply with Regulation (EC) No 1540/98 or any other Community legislation that may replace it.

Within the framework of these guidelines, other investment aid may, however, be permitted, in line with the Community safe seas policy, in certain restricted circumstances to improve equipment on board vessels entered in a Member State's registers or to promote the use of safe and clean ships. Thus aid may be permitted which provides incentives to upgrade Community-registered ships to standards which exceed the mandatory safety and environmental standards laid down in international conventions and anticipating agreed higher standards, thereby enhancing safety and environmental controls. Such aid must comply with the applicable Community provisions on shipbuilding.

Since shipping is essentially very mobile, regional aid for maritime companies in disadvantaged regions, which often take the form of investment aid to companies investing in the regions, may only be permitted where it is clear that the benefits will accrue to the region over a reasonable time period. This would, for example, be the case of investment related to the construction of dedicated warehouses or to the purchase of fixed transhipment equipment. Investment aid for maritime companies in disadvantaged regions may then only be permitted where it also complies with the regional aid rules (see Chapter 6).

6. REGIONAL AID ON THE BASIS OF ARTICLE 87(3)(a) AND (c)

In the context of regional aid schemes, the Commission will apply the general rules set out in its communications or other provisions on national regional aid or future amendments thereto.

7. TRAINING

It should be recalled, firstly, that aid to training is covered by the block exemption provided for by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid [1], which also applies to maritime transport.

Moreover, many training schemes followed by seafarers and supported by the State are not considered to be State aid because they are of a general nature (whether vocational or academic). These are, therefore, not subject to notification and examination by the Commission.

If a scheme is to be regarded as including State aid, notification is, however, required. This may be the case if, for example, a particular scheme is specifically related to on-board training and the benefit of State financial support is received by the training organisation, the cadet, seafarer or shipowner. The Commission takes a favourable attitude towards aid, granted on a non-discriminatory basis, to training carried out on board ships registered in a Member State. Exceptionally, training on board other vessels may be supported where justified by objective criteria, such as the lack of available places on vessels in a Member State's register.

Where financial contributions are paid for on-board training, the trainee may not, in principle, be an active member of the crew but must be supernumerary. This provision is to ensure that net wage subsidies cannot be paid for seafarers occupied in normal crewing activities.

Similarly, to safeguard and develop maritime expertise in the Community and the competitive edge of the Community maritime industries, further extensive research and development efforts are necessary, with a focus on quality, productivity, safety and environmental protection. For such projects, State support may also be authorised within the limits set by the Treaty.

Aid aimed at enhancing and updating Community officers' skills may be allowed during their whole career. The aid may consist of a contribution to the cost of the training and/or compensation for the wage paid to the officer during the training period. The schemes must, however, be designed in a way which prevents the aid for training from being directly or indirectly diverted into a subsidy to officers' wages.

Aid aimed at professional retraining of high-sea fishermen willing to work as seafarers may also be allowed.

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[1] OJ L 10, 13.1.2001, p. 20.

8. RESTRUCTURING AID

Although the Community guidelines on restructuring and rescuing firms in difficulty [1] apply to transport only to the extent that the specific nature of the sector is taken into account, the Commission will apply those guidelines or any other Community instrument replacing them in considering restructuring aid for maritime companies.

9. PUBLIC SERVICE OBLIGATIONS AND CONTRACTS

In the field of maritime cabotage, public service obligations (PSOs) may be imposed or public service contracts (PSCs) may be concluded for the services indicated in Article 4 of Regulation (EEC) No 3577/92. For those services, PSOs and PSCs as well as their compensation must fulfil the conditions of that provision and the Treaty rules and procedures governing State aid, as interpreted by the Court of Justice.

The Commission accepts that if an international transport service is necessary to meet imperative public transport needs, PSOs may be imposed or PSCs may be concluded, provided that any compensation is subject to the above-mentioned Treaty rules and procedures.

The duration of public service contracts should be limited to a reasonable and not overlong period, normally in the order of six years, since contracts for significantly longer periods could entail the danger of creating a (private) monopoly.

10. AID TO SHORT SEA SHIPPING

There is no legal definition of 'Short Sea Shipping'. However, the communication from the Commission on the development of Short Sea Shipping in Europe of 29 June 1999 [2] has provided a working definition of Short Sea Shipping, to be understood as 'the movement of cargo and passenger by sea between ports situated in geographical Europe or between those ports and ports situated in non European countries having a coastline on the enclosed seas bordering Europe' [3]. In this communication the Commission underscored the role of this transport mode to promote sustainable and safe mobility, to strengthen cohesion within the Community and to improve transport efficiency as part of an intermodal approach. The Commission also recognises that the promotion of short-sea shipping must be carried out at all levels, whether Community, national or regional.

Since aid to Short Sea Shipping aims to improve the intermodal chain and to decongest roads in the Member States, the definition of Short Sea Shipping such as provided by the 1999 communication should, for the purposes of this communication, be restricted to transport between ports in the territory of the Member States.

The Commission recognises that launching short-sea shipping services may be accompanied by substantial financial difficulties which the Member States may wish to attenuate in order to ensure the promotion of such services.

When such is the case, the Commission will be able to approve aid of this kind, on condition that it is intended for shipowners within the meaning of Article 1 of Regulation (EEC) No 4055/86 in respect of ships flying the flag of one of the Member States. Aid of this kind will have to be notified and to fulfil the following conditions:

— the aid must not exceed three years in duration and its purpose must be to finance a shipping service connecting ports situated in the territory of the Member States,

— the service must be of such a kind as to permit transport (of cargo essentially) by road to be carried out wholly or partly by sea, without diverting maritime transport in a way which is contrary to the common interest,

— the aid must be directed at implementing a detailed project with a pre-established environmental impact, concerning a new route or the upgrading of services on an existing one, associating several shipowners if necessary, with no more than one project financed per line and with no renewal, extension or repetition of the project in question,

— the purpose of the aid must be to cover, either up to 30 % of the operational costs of the service in question [4], or to finance the purchase of trans-shipment equipment to supply the planned service, up to a level of 10 % in such investment,

— the aid to implement a project must be granted on the basis of transparent criteria applied in a non-discriminatory way to shipowners established in the Community. The aid should normally be granted for a project selected by the authorities of the Member State through a tender procedure in compliance with applicable Community rules,

— the service which is the subject of the project must be of a kind to be commercially viable after the period in which it is eligible for public funding,

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[1] OJ C 288, 9.10.1999, p. 2.

[2] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, 'The development of Short Sea Shipping in Europe: a dynamic alternative in a sustainable transport chain — Second two-yearly report', COM(1999) 317 final.

[3] Communication, p. 2.

[4] In case of Community financing or eligibility under different aid schemes, the ceiling of 30 % applies to the combined total of aid/financial support. It should be noticed that the aid intensity is the same as that provided for modal shift actions within the Marco Polo Community initiative: cf. Article 5(2) of Regulation (EC) No 1382/2003 (OJ L 196, 2.8.2003, p. 1).

— such aid must not be cumulated with public service compensation (obligations or contracts).

11. CEILING

As was explained above, certain Member States support their maritime sectors through tax reduction whilst other Member States prefer to make direct payments — for instance, by providing reimbursement of seafarers' income tax. In view of the current lack of harmonisation between the fiscal systems of the Member States, it is felt that the two alternatives should remain possible. Obviously, those two approaches may, in some instances, be combined. However, this risks causing a cumulation of aid to levels which are disproportionate to the objectives of the Community common interest and could lead to a subsidy race between Member States.

A reduction to zero of taxation and social charges for seafarers and a reduction of corporate taxation of shipping activities such as is described in point 3.1 (penultimate paragraph) is the maximum level of aid which may be permitted. To avoid distortion of competition, other systems of aid may not provide any greater benefit than this. Moreover, although each aid scheme notified by a Member State will be examined on its own merits, it is considered that the total amount of aid granted under Chapters 3 to 6 should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers.

12. FINAL REMARKS

The Commission will continue to monitor regularly and closely the market conditions for shipping. Should the latter change, and should consequently the need for State aid be reduced or overcome, the Commission will take the necessary measures in good time.

All new proposals for measures notified to the Commission must include a calendar indicating, for the next six years, the expected quantified effects for each objective of point 2.2. In particular, the expected macro-economic return on the corresponding maritime cluster, together with an estimation of the number of jobs saved or created, is to be presented in such proposals.

For all the aid schemes — whether existing or new — falling within the scope of this Communication, Member States are to communicate to the Commission an assessment of their effects during their sixth year of implementation.

When aid has been approved and granted to a beneficiary, under the derogation from the flag link referred to in point 3.1, the relevant Member State must report to the Commission every three years starting from the date when the grant was granted. In its report, the Member State will quantify the effects produced and compare the results with the expected effects. The reporting requirements set out in this communication will enter into force upon its publication.

Furthermore, should it prove necessary, for example following a justified complaint, the Member State concerned must provide the Commission with evidence that the assistance granted to the respective beneficiary under an agreed scheme has been limited to the strict definition therein and has also produced the effects expected.

13. APPROPRIATE MEASURES

These guidelines will apply from the date of their publication in the *Official Journal of the European Union*. In accordance with Article 88(1) of the Treaty, the Commission proposes that Member States amend their existing aid schemes relating to State aid covered by these guidelines so as to comply with them by 30 June 2005 at the latest. Member States are invited to confirm that they accept these proposals for appropriate measures in writing by 30 June 2004 at the latest.

Should a Member State fail to confirm its acceptance in writing by that date, the Commission will apply Article 19(2) of Regulation (EC) No 659/1999 and, if necessary, initiate the proceedings referred to in that provision.

These guidelines will be reviewed within seven years of their date of application.

ANNEX

DEFINITION OF MEMBER STATES' REGISTERS

'Member States' registers' should be understood as meaning registers governed by the law of a Member State applying to their territories forming part of the European Community.

1. All the first registers of Member States are Member States' registers.

2. In addition, the following registers, located in Member States and subject to their laws, are Member States' registers:

   — the Danish International Register of Shipping (DIS),

   — the German International Shipping Register (ISR),

   — the Italian International Shipping Register,

   — the Madeira International Ship Register (MAR),

   — the Canary Islands register.

3. Other registers are not considered to be Member States' registers even if they serve in practice as a first alternative for shipowners based in that Member State. This is because they are located in and subject to the law of territories where the Treaty does not, in whole or in substantial part, apply. Hence, the following registers are not Member States' registers:

   — the Kerguelen register (the Treaty does not apply to this territory),

   — the Dutch Antilles' register (this territory is associated with the Community; and only Part IV of the Treaty applies to it; it is responsible for its own fiscal regime),

   — the registers of:

      — Isle of Man (only specific parts of the Treaty apply to the Isle — see Article 299(6)(c) of the Treaty; the Isle of Man parliament has sole right to legislate on fiscal matters),

      — Bermuda and Cayman (they are part of the territories associated to the Community, and only Part IV of the Treaty applies to them; they enjoy a fiscal autonomy).

4. In the case of Gibraltar, the Treaty applies fully and the Gibraltar register is, for the purposes of these Guidelines, considered to be a Member State's register.

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2004/C 13/04)

Date of adoption of the decision: 10.12.2003

Member State: Italy (Campania)

Aid No: NN 157/03 ex N 393/03

Title: Regional Law 6/2003: emergencies in the livestock sector

Objective: To provide a compensation to the milk producers whose animals have been contaminated by dioxin

Legal basis: Legge regionale n. 6 del 14 marzo 2003 «Emergenze zootecniche»

Budget: EUR 1 600 000 for the year 2003, to be defined for the years 2004 and 2005

Aid intensity or amount: Compensation for the animals slaughtered, when the slaughtering is ordered by public authorities and a compensation, at market prices, of the sequestrated milk

Duration: Until 2005. Each beneficiary can receive aid for a period of up to 6 months

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 10.12.2003

Member State: United Kingdom (Scotland)

Aid No: N 70/03

Title: Meat Industry Development Scheme

Objective: The objective of the scheme is to encourage, market, promote and assist with the development of the red meat sector in Scotland. Aid will be given for: technical support, improving the genetic quality of livestock, investments in agricultural holdings, investments for processing and marketing of quality red meat and red meat products, encouraging the production and marketing of quality products, introduction of quality assurance and other quality control systems, producer groups and encouraging young farmers

Legal basis: Agriculture Act 1967 (as amended); Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (Amendment) Order 2002 No 2636 which amends the Agriculture Act 1967

Budget: GBP 17,5 million

Aid intensity or amount: Variable

Duration: 5 years from the date of approval of the Commission

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2004/C 13/05)

(Text with EEA relevance)

Date of adoption of the decision: 10.12.2003

Member State: Sweden

Aid No: N 202/03

Title: Reimbursement of high sickleave payment for smaller employers

Objective: To compensate solely small enterprises for the increased cost of sickleave payment

Legal basis: Introduktionen av den föreslagna åtgärden – kommer att ske genom ändringar i Svensk lag nr 1991:1047 angående sjuklön

Budget: The budget of the scheme is estimated at SEK 250 million (± EUR 25 million) per year

Duration: 1 January 2004 to 1 January 2005

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 1.12.2003

Member State: Italy

Aid No: N 310/03

Title: Aid for sources of renewable energy

Objective: To promote investment in renewable energy

Legal basis: Legge n. 598/94, articolo 11; D.L. n. 516/94; Legge n. 448/98, articolo 8, c. 10, lettera f); D.L. n. 500/99, articolo 2, c. 1.; D.M. n. 337/2000, articolo 5

Budget: EUR 25 820 000

Aid intensity or amount: Consistent with the intensities applicable under the Community guidelines on state aid for environmental protection

Duration: Until 31 December 2007

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 1.12.2003

Member State: Germany

Aid No: N 341/03

Title: SME Interest Subsidy Programme — prolongation (Saarland)

Objective: Supporting investment activities by small and medium-sized enterprises in Saarland

Legal basis: Richtlinien für das Zinszuschussprogramm zur Förderung von kleinen und mittleren Unternehmen sowie des Fremdenverkehrs im Saarland

Budget: EUR 885 300 p.a.

Duration: Limited until 31 December 2006

Other information: Germany has to submit an annual report on the implementation of the scheme

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 1.12.2003

Member State: United Kingdom

Aid No: N 455/03

Title: Cleaner Coal R & D Programme (alteration)

Objective: Promoting the development of more environmentally efficient technologies for utilising coal for electricity generation

Legal basis: Science and Technology Act 1965

Budget: Originally anticipated GBP 4,7 million (approximately EUR 6,8 million), 2004 budget not yet finalised, level of refinancing will fall below 100 % refinancing eligibility

Aid intensity or amount: Mostly 50 % gross; 75 % for feasibility studies in dioxide capture field at the R & D stage of industrial research

Duration: Until 31 March 2005

Other information: The United Kingdom authorities have to submit an annual report on the implementation of the scheme

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 26.11.2003

Member State: Italy (Basilicata)

Aid No: N 82/03

Title: Grants to risk funds of cooperatives and collective guarantee association for commerce and tourism

Objective: Promote SME investments, facilitating SME access to guarantees

Legal basis: Delibera della Giunta Regionale della Regione Basilicata n. 1451, 2 agosto 2002 — Approvazione preliminare del bando

Budget: EUR 600 000

Aid intensity or amount: Within the ceilings of Commission Regulation (EC) No 70/2001

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Prior notification of a concentration

(Case COMP/M.3333 — Sony/BMG)

(2004/C 13/06)

(Text with EEA relevance)

1. On 9 January 2004 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which the undertakings Bertelsmann AG ('Bertelsmann', Germany) and Sony Corporation of America belonging to the Sony group ('Sony', Japan), acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the undertaking 'Sony BMG' by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Bertelsmann: Music recording and publishing, television, radio, publishing of books and magazines, book and music clubs,

— Sony: Music recording and publishing, industrial and consumer electronics, entertainment services,

— Sony BMG: Combination of the worldwide recorded music businesses of Sony and Bertelsmann (excluding Sony's activities in Japan).

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3333 — Sony/BMG, to:

European Commission,
Directorate-General for Competition,
Merger Registry,
J-70,
B-1049 Brussels.

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[1] OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Prior notification of a concentration

(Case COMP/M.3363 — Santander/Doncasters)

Candidate case for simplified procedure

(2004/C 13/07)

(Text with EEA relevance)

1. On 5 January 2004 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which Capital Riesgo Global CRG SA ('CRG', Spain) controlled by the Banco Santander Central Hispano SA ('BSCH', Spain) and Royal Bank Investments Limited ('RBI') controlled by the Royal Bank of Scotland Group Plc. ('RBS', UK) acquire within the meaning of Article 3(1)(b) of the Regulation joint control of Doncasters Group Limited ('Doncaster', UK) currently solely controlled by RBI, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— CRG: private equity investment,

— BSCH: banking and related financial services,

— RBI: private equity investment,

— RBS: banking, insurance and related financial services,

— Doncasters: manufacturer of aerospace engine components, gas turbines, heat exchangers, turbo-chargers for automotive use and orthopaedic implants.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Regulation (EEC) No 4064/89 [3], it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3363 — Santander/Doncasters, to:

European Commission,
Directorate-General for Competition,
Merger Registry,
J-70,
B-1049 Brussels.

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[1] OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

[3] OJ C 217, 29.7.2000, p. 32.