



EUROPEAN COMMISSION

Brussels, 20.12.2010  
C (2010) 9509 final

PUBLIC VERSION

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**Subject: 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**

Dear Sir,

By letter dated 19 May 2010<sup>1</sup>, your authorities notified to the Commission the budgetary modification of an existing tonnage tax scheme<sup>2</sup> in favour of international maritime transport.

On 3 November 2010, the Commission adopted a decision not to raise objections to the prolongation of an existing tonnage tax scheme in favour of the Slovenian international maritime transport sector (C (2010) 7645).

On 17 November 2010, the Slovenian authorities informed the Commission<sup>34</sup> that the decision in question contained an error concerning the overall budget. Upon examination it was established that inaccuracies at the time of the original notification of the measure and a fragmented approach in the calculations mislead the Commission in the writing of its decision. In particular, this concerns the exact amount of the foreseen total budget proposed. However, this error does not affect the Commission's reasoning or conclusion of the previous decision regarding the existence of aid and its compatibility with the internal market.

This is to inform you, therefore, that the Commission has proposed to correct the first line of paragraph .22 by replacing EUR 19.500.000 by EUR 35.200.000 so that it reads as follows: "The current notification concerns only the change in the overall budget of the existing scheme from EUR 6.139.210 to EUR 35.200.000". Accordingly, the factsheet to be published in the Official Journal shall indicate the amount of EUR 35.2 million.

<sup>1</sup> Notification registered with the Commission services on 19 May 2010 with ref. N 188/2010.

<sup>2</sup> Approved by the Commission 13.01.2009 in its Decision N 325/2007, OJ C 53 of 6.03.2009, p.1.

<sup>3</sup> Registered under Reference A/14200.

Samuel ŽBOGAR  
Minister za zunanje zadeve Republike Slovenije  
Prešernova cesta 25  
SI-1001 Ljubljana

Yours faithfully,

Joaquín ALMUNIA  
Vice-President of the European  
Commission

**Annex:** Corrected version of Commission decision C(2010)7645 from 29 October 2010 Budget modification of the tonnage tax scheme in favour of international maritime transport (State aid N°188/2010)



EUROPEAN COMMISSION

Brussels, 29.10.2010

C(2010)7645 corr.

PUBLIC VERSION

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**Subject: State aid - N 188/2010 - Slovenia**

**Budget modification of the tonnage tax scheme in favour of international maritime transport**

Sir,

## 1. PROCEDURE

1. By letter dated 19 May 2010<sup>5</sup>, the Slovenian authorities notified the Commission, in accordance with Article 108(3) of the TFEU, of their intention to introduce a budgetary modification to an already existing support measure, the tonnage tax scheme in favour of international maritime transport<sup>6</sup>.
2. By letter dated 02 June 2010<sup>7</sup>, the Commission requested additional clarifications regarding this modification. By letter dated 10 June 2010<sup>8</sup>, the Slovenian authorities provided the Commission with replies.
3. By letter dated 21 June 2010<sup>9</sup>, the Commission requested further additional information and received a final reply by the Slovenian authorities on 23 August 2010<sup>10</sup>.

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<sup>5</sup> Registered under Reference SANI 4450.

<sup>6</sup> State aid N 325/2007 - Introduction of a tonnage tax scheme in favour of maritime transport, Commission decision from 13 January 2009, OJ C 53, 6.3.2009, p. 1.

<sup>7</sup> Registered under Reference D/7383.

<sup>8</sup> Registered under Reference A/9635.

<sup>9</sup> Registered under Reference D/7787.

<sup>10</sup> Registered under reference A/11850.

## 2. SUMMARY DESCRIPTION OF THE EXISTING SCHEME<sup>11</sup>

### Objective of the aid

4. The tonnage tax scheme is a fiscal measure intended to maintain and foster the EU/EEA flagged maritime fleet, to preserve maritime know-how in Slovenia, to preserve the existing Slovenian fleet and its commercial and strategic management as well as to preserve significant employment on-board and on shore in Slovenia. Companies qualifying for the tonnage tax may opt for a tax calculated on the net tonnage of the fleet that they operate (tonnage tax) instead of being taxed in the actual profits of their maritime transport activities.
5. Access to tonnage tax is made conditional on training requirements and in particular on the employment onboard tonnage tax vessels of sea cadets. On average, tonnage tax companies must hire one seafarer trainee per vessels under tonnage tax.
6. The tonnage tax was introduced by the Law of 22 June 2007<sup>12</sup> (thereafter the Tonnage Tax Act), and entered into force 15 days after its publication in the Slovenian Official Gazette and was conditional an approval from the Commission under State aid rules<sup>13</sup>.
7. The Slovenian authorities indicated that the objectives of the Tonnage Tax Act are to boost the competitiveness of Slovenian ship owners, to maintain jobs and maritime expertise, to support the development of maritime economy, the employment of seafarers from EU Member States, the registration of vessels in Member State ship registers, to properly align Slovenian fiscal legislation to the legislation of other EU maritime Member States, and to contribute to linking up the maritime economies of Member States whilst maintaining the overall competitiveness of the fleet.
8. In particular, the Slovenian authorities are of the opinion that the tonnage tax scheme will encourage the flagging or re-flagging of ships to Member States' registers. Tonnage tax is therefore helping to create a safe, efficient, secure and environmentally friendly maritime transport sector.

### 2.1. Beneficiaries

9. The participation in the tonnage tax regime is open to all persons which are liable to corporate income tax in the Republic of Slovenia<sup>14</sup>, are engaged in international maritime transport and operate one or more eligible ships that are strategically and commercially managed from the territory of Slovenia, by the eligible company or by a third party.

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<sup>11</sup> For the full description of the measure see Commission Decision N 325/2007 OJ C 53 of 6 March 2009, p.1

<sup>12</sup> Uradni List RS, N°61/2007

<sup>13</sup> As stated in Article 29(1) of the Tonnage Tax Act.

<sup>14</sup> Under the Slovenian Corporate Income Tax Act, taxable persons are all legal persons carrying out commercial activities and having their head offices in Slovenia, non-resident legal persons (i.e. not having their head office in Slovenia) to the extent that the income is the result of carrying out a business activity in Slovenia and permanent establishment of a foreign entity unless regulated differently in an agreement on avoidance of double taxation.

10. The Slovenian authorities estimate the notified regime to be used by less than 10 beneficiaries.

## **2.2. Eligibility conditions for vessels**

11. The Tonnage Tax Act lays down the conditions under which a vessel can be considered as eligible to the tonnage tax.
12. Under Article 9 of the Tonnage Tax Act, an eligible vessel is a sea craft with a gross tonnage of 100 tons or more which :
- has a valid certificate pursuant to the International Convention on Load Lines or the International Convention for the Safety of Life at Sea issued by the country of flag and;
  - is intended for maritime transport of passengers or goods, for tug activities or assistance at sea.
13. Excluded from the tonnage tax are the ships which do not engage in international navigation and the ships which are used for one of the following purposes (military purposes, fishing, catering purposes (floating hotels or restaurants), gaming purposes (floating gaming parlours), telecommunications purposes, research, recreation and sports, dredging, delivering other activities which are usually performed on land). Cable-layers, pipe-layers and survey ships are excluded from tonnage tax.

## **2.3. Calculation of the tax due under the scheme**

14. The amount of tax to be paid by qualifying companies is established on the basis of the net tonnage of the qualifying vessels. Articles 4 and 5 of the Tonnage Tax Act determine which activities of the qualifying vessels are taxed under the notified regime.
15. The principle underlying the amount of due is that qualifying companies shall be taxed on the basis of a fixed notional profit calculated as a lump sum determined on the basis of the net tonnage of each of the qualifying vessels as follows, per 100 net tons (NT) and per number of days when the vessel concerned is operational.

<b>Net tonnage</b>	<b>Euro/day per 100 net tons</b>
up to 1000 net tons	0.90
from 1001 to 10,000 net tons	0.67
from 10,001 to 25,000 net tons	0.40
over 25,001 net tons	0.20

#### **2.4. Duration of the tonnage tax status**

16. The grant of the tonnage tax status will be valid for a 10-year period<sup>15</sup>. The year of entry is considered in its entirety as the year of the submission of an application for entry into the tonnage tax regime.
17. Over the 10-year period, the tonnage tax company cannot exclude vessels, unless:
  - the vessel is sold, lost or returned to its owner upon the termination of a charter-in or bareboat charter contracts; or
  - the vessel is no longer used for eligible activities.
18. In addition, under Article 13 of the Tonnage Tax Act, the fiscal authorities can *ex officio* exclude vessels that no longer meet the eligibility conditions<sup>16</sup>.

#### **2.5. Duration of the scheme**

19. The scheme will last 10 years as from 1 January 2008 and will be re-notified to the Commission before the end of this 10-year period. Therefore, the last date until which entry into tonnage tax may be granted shall be 31.12.2018.

#### **2.6. Ring fencing measures**

20. The scheme provides for a number of ring-fencing measures to avoid spill-over effects into non-eligible activities in Slovenia or in other countries. These ring-fencing measures are intended to prevent non-qualifying activities from enjoying the benefit of the low tax scheme. They are explained in detail under paragraphs 27-39 of Commission Decision N 325/2007<sup>17</sup>.

#### **2.7. Absence of 'flag-link'**

21. The notified tonnage tax scheme has no explicit flag link, that is to say a requirement whereby only vessels listed in EU/EEA maritime registers would have been eligible for tonnage tax. However, companies under tonnage tax must fulfil the requirement contained in the Section 3.2 subparagraph 8 of Guidelines on State aid to maritime transport<sup>18</sup> (hereinafter "the Guidelines")<sup>19</sup>.

#### **2.8. Modifications introduced in the scheme with the current notification.**

22. The current notification concerns only the change in the overall budget of the existing scheme from EURO 6.139.210 to EURO 35.200.000. The Slovenian authorities indicated that this change is required due to the fact it was implemented for the first time in Slovenia and there was a need for an update of the original budget given that

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<sup>15</sup> Article 7 of the Tonnage Tax Act

<sup>16</sup> A tonnage tax company cannot include an excluded ship again in tonnage tax until the expiration of the ten-year term. In case of an *ex officio* exclusion, the fiscal authorities may impose a penalty corresponding to the difference between what should have been paid under corporate tax and what has been paid under tonnage tax.

<sup>17</sup> OJ C 53 of 6 March 2009, p.1

<sup>18</sup> See Community Guidelines on State aid to maritime transport; OJ L 3 of 17.01.2004.

<sup>19</sup> See paragraphs 40-43 of Decision N 325/2007.

initial calculations were drawn up based on incorrect estimates. The budget increase is also due to the fact that companies which entered into tonnage tax have enjoyed much higher revenues during the first years of application of the scheme than expected, which, in turn, leads to higher losses for the State because of the exemption from payment of corporate tax.

### **3. ASSESSMENT OF THE AID**

#### **3.1. Existence of aid under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)**

23. Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States is incompatible with the internal market.
24. Through the tonnage tax scheme, the Slovenian authorities envisage lowering the corporate income tax that international shipping companies would otherwise have to bear. The Commission therefore considers that the notified regime confers a selective economic advantage to undertakings active in the international maritime transport.
25. This fiscal advantage is granted through State resources because the Slovenian authorities are foregoing tax revenues.
26. Such measure threatens to distort competition and could affect trade between Member States, since such shipping activities are essentially carried out on a worldwide market.
27. Therefore, the Commission considers that the modification introduced by the current notification does not alter its initial conclusion that the scheme under examination constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.2. Compatibility assessment**

28. Aid in favour of the maritime sector must be examined in the light of the Guidelines<sup>20</sup>. The latter determine the conditions under which Member States are allowed to set up certain State aid schemes to support their maritime transport industry in the pursuit of general objectives
29. Chapter 3.1 of the Guidelines specifically mentions tonnage tax schemes as examples of fiscal measures that "*have been shown to safeguard high quality employment in the on-shore maritime sector*", and may thus be considered compatible with the internal market<sup>21</sup>.
30. However, the Guidelines lay down certain criteria, which such schemes must meet to be considered compatible with the internal market.

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<sup>20</sup> Community Guidelines on State aid to maritime transport; OJ 13/3 of 17.01.2004.

<sup>21</sup> See fourth and fifth subparagraphs of Chapter 3.1. of the Guidelines: "*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. .... Such measures have been shown to safeguard high quality employment on the on-shore maritime sector, such as management directly related to shipping and also in associated activities (insurance, brokerage and finance). ... these type of fiscal incentive can generally be endorsed.*"

31. The Commission will thus assess below whether the modification of the scheme under examination fulfils the criteria established by the Guidelines. As regards the other conditions established by the guidelines the Commission makes reference to its assessment of State aid N 325/2007 as no other aspect of the scheme has been amended.

### **3.2.1. Scope of the notified modification of the scheme**

32. The Commission notes that the only material modification introduced with the notification under examination is an increase in the scheme's budget. The Commission acknowledges that Slovenia did not have prior experience in implementing such schemes and that the initial scheme was notified already in 2007. Therefore, it had been difficult to estimate the precise budgetary losses to be made throughout the 10 year application of the scheme and certain estimates turned out to be wrong.
33. The Commission considers that the budget allocated to the scheme does not change its initial conclusion that the measure is compatible. The Commission takes note that the increased budget is a consequence of the increase in revenues for companies covered by the tonnage tax leading to higher losses for the State due to the corporate tax avoided. It is within the functioning of the tonnage tax not to reflect the increase of revenues of shipping companies, which, nevertheless, leads to higher losses for the State and thus the higher budget of the scheme. since all other strict conditions on calculation of the tonnage tax, on eligibility of companies and activities, flag-link requirements and ring fencing measures remain unchanged and rigorously applied.

## **4. CONCLUSION**

34. Having regard to the analysis set out above, the Commission concludes that the notified modification of the existing tonnage tax scheme complies with the requirements laid down in the Guidelines.

## **5. DECISION**

In the light of the above, the Commission has decided to consider that the notified fiscal modification is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

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:  
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Directorate-General for Competition  
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B-1049 Brussels  
Fax (32-2) 296 12 42  
Stateaidgreffe@ec.europa.eu

Yours faithfully,  
For the Commission

*Cecilia MALMSTRÖM*

Member of the Commission