TOPIC OF DISSERTATION

THE STATE AID IN FORM OF TAX MEASURES IN CARRIAGE OF GOODS BY SEA

By Anastasia Kampouropoulou

ID: 1104120008

Supervisor Professor: Dr George Matsos

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## ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>CFI</td>
<td>Court of First Instance</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<td>TFEU</td>
<td>Treaty of Functioning of European Union</td>
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<td>EC</td>
<td>European Community</td>
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<td>DG COMP</td>
<td>Directorate-General Competition</td>
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<td>ECSA</td>
<td>European Community Shipowner’s Association</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<td>EEA</td>
<td>European Economic Area</td>
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PREFACE

The aim of this dissertation is to examine the state aid in the form of the fiscal aid in carriage of goods by sea because of the vital role that carriage of goods by sea plays in the EU economy. Due to the fact that many ships are registered in third countries for tax reasons there is a need for member States to intervene so as to protect their maritime from the third countries, by flagging or reflaging their vessels under EU flags.

EU law through the FEU treaty, Directives, The European Commission and the European Court of Justice decisions try to cite the preconditions for granting state aid so as not to be abusive and opposite to the competition law especially in the maritime transport field.

Each State Member is obliged to comply with the guidelines that European Commission has set out about state aid in maritime transport so as to help to EU integration and the competiveness internationally. Commission has also the power to determine the compatibility of this aid which proposed by the Member States in the form of some tax alleviations.

For this reason, the most of EU Member States have adopted the tonnage tax regime which is a friendly business regime and it was adopted by shipping companies. The tonnage tax is not calculated according to net profit of the shipping company but according to the tonnage of each ship and has many advantageous instead of classic corporate tax system.

For this reason I would try to examine all the legal aspects of the state aid in the form of fiscal aid and how member states through cases tried to expand both the activities which are covered by the tonnage tax in the form of granted state aid.

So, through some indicative cases, I would try to pinpoint all the crucial problems arose by the case law and how Commission has faced them in these decisions in its trial to decide about the compatibility of proposed measures with article 107(3) of FEU and the maritime transport guidelines.
CHAPTER ONE : THE CONCEPT OF STATE AID

1.1 INTRODUCTION-DEFINITION

From the very early, European Union, in the form that it had at 1951 as European Community of Coal and Steel, had signed the first treaty of establishing the ECSC with basic aim the free movement of coal and steel and the free access to sources of production, respecting the competition rules and the price transparency. State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. A company which receives government support gains an advantage over its competitors. Through State Aid, governments exercise policy so as to face some social, economic problems. State aid’s concept was prohibited in the first treaty of ECSC, according to article 4 paragraph c. which stated that “subsidies or aid granted by States or special charges imposed by States in any form whatsoever are recognized as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community as provided in this Treaty”.

The ECSC Treaty was followed by the EC Treaty and today by the FEU Treaty where article 4 was replaced by article 92. The prohibition continued to exist but the treaty adopted some exemptions to the basic ruling because it was judged that state aid in some cases could be necessary. Then article 92 of ECSC renumerated firstly to article 87 TEC and today to article 107 TFEU with the same ruling.

According to article 107(1) of the Treaty of FEU (ex article 87 of TEC), the State Aid in the EU internal market is prohibited because it can distort or threaten to distort competition by favoring certain undertakings or the production of certain goods affecting trade between member States.

The concept of state aid is wider than that of a subsidy\(^1\) and for this reason the treaty contains no legal definition of the term. It includes any measure which mitigates the charges which are normally borne by the budgets of firms. A tax is such a charge.\(^2\) The Commission in combination with the court of Justice tried to define it.\(^3\)

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\(^1\) C-30/59, Steenkolenmijnen v High Authority

\(^2\) C-387/92, Banco Exterior de Espana, C-75/97 Belgium v Commission, C-66/02 Italy v Commission

The Court of Justice, through cases, had found that aid can be characterized as state aid if it has simultaneously all of the following elements:

i. Preferential effect- Support for particular undertakings or spheres of commercial activity

It aids an undertaking, i.e. an entity engaged in economic activity. Economic activity is an activity for which there is a market in comparable goods or services. It can include voluntary and non-profit-making public or private bodies such as charities or universities when they engage in activities which have commercial competitors. It includes self-employed/sole traders, but generally not employees as long as the aid does not benefit the employers, private individuals or households. It favors them by conferring an advantage on them. An advantage may be direct or indirect, e.g. grants or favourable loan terms or services provided at less than market cost, or relief from charges a business would normally bear.

ii. Aid granted by the State or through State resources:4

State resources include public fund administered by the Member state through central, regional, local authorities or other public or private bodies designated or controlled by the State. It includes indirect benefits as tax exemptions that affect the public budget.

iii. Distortion of competition

It potentially or actually strengthens the position of the recipient in relation to competitors. Almost all selective aid will have potential to distort competition regardless of the scale of potential distortion or market share of the aid recipient.

iv. Effect on trade between Member State

This includes potential effects. Most products and services traded between Member States and therefore aid for almost any selected business or economic activity is capable of affecting trade between States even if the aided business itself does not directly trade with Member States. The only likely exceptions are single businesses, e.g. hairdressers or dry cleaners with a purely local market not close to a Member State border. The case law also shows that even very small amounts of aid can affect trade5.

4 Dangtoglou P European Community Law II, publisher Sakoulas 1998 page 312
5 ‘The State Aid Guide- Guidance For State Aid Practitioners’ BIS DEPARTMENT FOR BUSINESS INNOVATION SKILLS, JUNE 2011
1.2 KINDS OF STATE AID

The notion of aid covers subsidies, the exemption of taxes and charges, the exemption of parafiscal levies, interest allowances, sureties at particularly favorable prices, the supply of goods or services at preferential conditions, the coverage of loss or any other measure with the same effect. For example within the scope of article 107(1) are State grants, interest rate relief, tax relief, tax credits, State provision of goods or services on preferential terms, free advertising on state owned television, selling or buying assets, goods or services at below or above market price respectively and many other examples some more common some more surprising.

The Council Regulation No 659/1999 laid down detailed rules for the application of art. 108 (ex art.88 and ex 93) about State aid and according to art 1 of the regulation state aid can be one of the following:


1.3 STATE AIDS COMPATIBLE OR MAY BE COMPATIBLE WITH THE INTERNAL MARKET

There is some exclusive aids that are compatible with the internal market according to article 107(2) TFEU including all aids having social character, making good the damage caused by natural disasters or exceptional occurrences and aids granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

Nevertheless, a measure is found so as state aid to be compatible with the basic ruling and this is when it promotes the objectives defined in the various categories of exemption and in particular the conditions laid down in article 107(3) TFEU (ex art 87(3) TEC). The court of Justice and the Commission have also judged in many cases that state aid must be necessary.

According to article 107(3) state aids may be compatible with the internal market if a. the aid promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment and of the regions referred to in Article 349, in view of their structural, economic and social situation.

b. aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State,
c. aid to facilitate the development of certain economic activities or of certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest,

d. aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest,

e. such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

1.3.1 WHEN TAX EXEMPTION IS WITHIN THE SCOPE OF ART 107(1) FEU AND WHEN WITHIN ART 107(3) FEU

The Court of Justice defines state aid as a measure which specifically serves as a means of pursuing certain objectives which, as a rule, cannot be achieved without outside help. Its case law with regard to the notion of State Aid is characterized by a functional approach. Ruling repeatedly emphasize that it is the effect of the aid which is important and not its legal nature, objectives or the type of the institution which grants the aid. In the past, Member States have repeatedly argued that tax preferences did not come within the scope of art 107 TFEU because national taxation is a matter which falls within their exclusive competence. The ECJ expressively rejected this thesis, ruling that the preferential effect on a measure is the only decisive criterion for the application of art 107(1) TFEU, irrespective of the legal nature of the measure.

The Commission adopted the Court’s interpretations in its decision practice pursuant to European Treaty. According to its view, the notion of aid covers any intervention which, in various forms, consists of granting of an amount which facilitates an investment, thereby reducing the costs usually borne by the company itself. As early as 1963 the Commission, in a reply to a parliamentary question, supplemented its wide interpretation of the concept of aid with a still valid list of various possible examples.

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6 Ex article 92EEC
7 Thus the Italian Government in re 173/73- Italy v Commission, ECR 1974,pp 709ff.,713
8 Ex article 92EEC
9 Commission in re 730/79,ECR 1980 p 2671-Philip Morris v Commission
10 A Brief Guide to European State Aid law, European Business Law & Practice Series, Kluwer Law International
From the previously argument we can understand that tax measures can be included in the exemptions of article 107(3) FEU because an aid as a tax measure can be determined by the effects that it has and not its nature as tax measure.11

Since a tax is a burden on the budgets of firms, it cannot be state aid within the meaning of art 107(1) FEU.12 However the general ruling applies to those aspects of tax systems such as tax exemptions or reductions and other forms of favorable treatment which reduce partially or fully the burden of the full tax or normal treatment.

A tax exemption or reduction places beneficiaries in a more advantageous position than their competitors13. Therefore the following would normally be found to constitute state aid: i. reduction of the tax base, ii. Reduction of the rate of tax, iii. Advantage to shareholders14, iv. Deferment, cancellation or rescheduling of tax debt. Delay in collecting taxes may also be aid unless justified by the private-creditor principle15.

Taxes are caught by article 107(1) FEU only when there is a direct link between the tax revenue and aid measures financed by that revenue16. Many cases concerned parafiscal charges have been found incompatible to art 107(3) FEU because the charges themselves were infringing other provisions of the Treaty, such as the prohibition of discrimination on the basis of national origin17. Fiscal aid is an operating aid18 which according to general opinion falls within the scope of art 107(1) TFEU although the opinions are totally different and its finally its up to the Commission to jugde each time about the tax measure if it is compatible with art 107(3) TFEU. However operating aid is exceptionally allowed in three cases: i. investment aid for regional development in art 107(3a)TFEU areas ,ii. the reduction of

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11 See again C-173/73 Italy v Commission
12 C390/98, Banks
13 C-6/97, Italy v Commission)
14 C-222/04,Fondazione Cassa di Risparmio San Miniato
15 C-256/97,DMT
16 C-174/02, Streekgewest Westelijk Noord Brabant, case with parafiscal charges which are levied on particular products. The revenue collected is then used for the promotion of those products.
17 Commission Decision 2000/206 on aid to the Greek Cotton Board, Commission Decision 2000/116 on Dutch ornamental plants. In those cases both the aid and the charges were prohibited.
18 Court of Instance defined operating aid as the aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day to day management or its usual activities and it don’t fall in the scope of art 87(3) TEC
environmental taxes and iii. maritime transport. For each case the Commission has issued guidelines to promote and limit these kinds of aid.

1.4 STAGES OF EXAMINATION OF STATE AID BY COMMISSION

The sole authority which has the power to determine the compatibility of the aid is the European Commission. A form of aid is compatible with the Treaty until the Commission has ruled to the contrary. It is for this reason that a constant aid surveillance is necessary. The commission has wide discretion, the exercise of which involves complex economic and social assessments which must be made in a Community context.19.

Commission decisions are only subject to review by the Court of First Instance of the Community and by the ECJ. Since 1 August 1993, the CFI has had competence to act as a court in aid cases. Appeals against its ruling can only be made to the ECJ.

The surveillance procedure of the Commission is set out in art 108FEU (ex art 88 EC) and the regulation No 659/1999 which laid down detailed rules for the application of art. 108 (ex art.88 and ex 93)20 about State aid and consists of two stages, the preliminary procedure and the main procedure, The surveillance procedure differs between existing aid, unlawful aid, misuse of aid and proposed new or altered aid.

Art. 108(3) about new or altered aid puts Member State under an obligation to inform the Commission of the planned introduction of a form of aid. When the Commission has been notified of an aid system it conducts a preliminary procedure which according to case law of the ECJ has to be concluded within two months21.

During this preliminary phase, if the proposed aid proves to be compatible with the internal market, the Commission will issue a positive statement which, however, does not constitute a formal decision. This statement concludes the preliminary procedure. If the decision turns out to be negative, if there are serious doubts about the compatibility of the proposed aid with the internal market, the Commission is then obliged to initiate the so-called main review procedure in

19 T-348/04, SIDE v Commission paragraph 96
20 As the regulation no 659/1999 was amended by the regulation No 734/2013
21 ECR 1973, pp 1471, 1482- Lorenz v Germany
accordance with art 108(2) FEU. The blocking effect will continue for the duration of the procedure. If the Commission does not make any statement at all, the aid of which it has been notified becomes an existing aid and will be subject to constant review pursuant to art 108(1) FEU. The main procedure is concluded with the Commission Decision which either declares the aid compatible with the internal market or orders the Member State to discontinue or design the aid. If the decision is negative, the Commission is bound to provide, in particular, a sufficiently concrete indication as to the extent to which aid is considered to be incompatible with the internal market in order to ensure compliance. If a Member State fails to comply, the Commission in accordance with art 108(2) FEU is entitled to bring the matter directly before the ECJ. Private individuals may rely on the Commission Decision before national courts.  

About the existing aid the Commission in cooperation with the Member States constantly reviews all systems of aid which already existed when those Member States Joined the Community, or which were in effect at the time when the Treaty was signed. Member States are obliged to provide the Commission with all the information necessary for it to carry out its surveillance duties. The Commission is entitled to propose to the member countries any appropriate measure required by the progressive development or by the functioning of the internal market. For this reason the Commission makes use of a recommendation, which has no binding force. If the aid is incompatible with the internal market, the Commission, by means of a notification in the EC’s Official Journal will have to initiate a review procedure in accordance with art 108(2) FEU. However, this procedure does not block the grant of already existing aid. In case of misuse of aid the Commission can start the main review procedure.

In case of 'unlawful aid' where a Member State grants state aid in violation of the rule pursuant to art 108(3) TFEU, complaints may be lodged with the Commission or it may decide to investigate with a view to determining whether this aid is compatible with the state aid rules. If the Commission finds that the aid was paid in violation of these rules and distorted competition in the single market ('incompatible aid'), the Member State must recover it from the beneficiaries.

22 ECR 1973,pp 611,622 - Capolongo v Maya
23 ECR 1973,pp 813,830 - Commission v Germany, ECR 1984 pp 1451,1488 Germany v Commission for the main review procedure, cf point 3 below
CHAPTER TWO: TAX PROBLEMS IN MARITIME TRANSPORT

2.1 INTRODUCTION TO EU TAX LAW

Taxation is by its nature one of the main elements distorting competition. The EU law includes provisions that are directly applicable and that are relevant in relation to direct taxes and some of them are the art 18 TFEU which is the general non discriminatory rule and articles 21,45,49,56 TFEU on the four freedoms of EU. Older EC treaty included an express reference to income tax treaty negotiations that no longer exists in TFEU.

Each EU Member State has its own national tax system. EU Tax law , tax treaties which concluded by each Member State and the national law of each Member State are parts of the national tax laws of Member States. These different parts of tax law are, however, in strong interaction with each other. For example EU tax law has a substantial impact on the national tax laws of the Member States. The EU does not benefit directly from the tax revenue. The relationship and the primacy order among the different segments of tax law must be determined in order to determine the tax consequence in a cross border situation.

Member States may use bilateral or multilateral conventions as tool to implement EU law objectives and must comply with EU law\textsuperscript{24}. The reason that Member States resort to these conventions is to avoid double taxation and through the principles of OECD Model Tax Convention the Member States succeed to avoid double taxation internationally.

The Member States follow the corporate tax system for the companies or other legal entities seated in their place, where impose a tax based on their income and especially on their business profits. Except for EU treaty there are four directives: i. The Parent-Subsidiary Directive, ii. The Mergers Directive, iii. the Taxation of Savings Directive and iv. the Interest& Royalty Payments Directive that implement the treaty and national law about the corporate tax system. The corporate tax system is though as the fairest form of taxation as it based on the ability of the taxpayer to pay

\textsuperscript{24} O’ Shea 2008, about tax treaties and EU law
and for this reason it is accepted as the best instrument to prevent distortion of competition.

2.2 TAX TONNAGE VERSUS CORPORATE TAX

In the taxation of the shipping industry, things work differently. More and more countries adopt the tonnage tax system that is an alternative method of calculating corporation tax profits by reference to the net tonnage of the ship operated and in this way the maritime companies remain competitive internationally. The tax tonnage profit replaces both the tax- adjusted commercial profit/loss on a shipping trade and the chargeable gain/losses made on tax tonnage assets. Once the tax, imposed according to the tonnage of each ship, is paid no other tax, is imposed on the net income and the shipowner acquires from the shipping business.\(^{25}\)

There are many reasons that make the tonnage tax system a desirable tax system although the tax payer has to pay tax even if he does not make any profit out of his business. First of all it is simple tax system. There is no need for special knowledge about complicated tax provisions and for this reason helps reducing the cost of the shipping company. Furthermore this type of taxation is an integral part of the general ship cost offering economic efficiency to shipowner. There is also tax certainty because the tax payer is very difficult to commit tax evasion. Finally there is transparency because the tax payers can compare the tax levels of each legal system when they decide about the flag of the ship and the seat of company and there is a considerable reduction on the tax burden. The main reason that happened is because member States hope to keep their flags competitive through its tonnage tax system.

Each country adopts its national Tonnage Tax System according to EU Tonnage Tax regime which set the basic guideline for a company if it wants to enter to tonnage tax system. Its up to each country’s national law to define the provisions between a national flag vessel, a EU flag vessel and a mixed fleet. Its also up to each country’s national law to set the qualification criteria, the applicable tax regime, the election criteria and conditions to be fulfilled to remain in the tonnage tax system (in

\(^{25}\) Some legal orders deviate from the pure tonnage system and impose a tonnage in parallel to a tax system based on net profits. This tonnage tax system normally has to replace for all taxpayers or offer the option to replace income taxation on the net profits with a pure tonnage tax system.
addition to qualification criteria), the period that they have to stay in the tonnage system, the tonnage tax rates for every 100 units of net tonnage, additional tonnage tax for PARIS MOU, Grey and Black lists and finally the income liable to tonnage tax and exempt from the corporation tax.

The tonnage tax system can include profits from exploitation of a qualifying ship in a qualifying shipping activity, profits from disposal of a qualifying ship and/or the shares of a shipowing company, dividends paid directly or indirectly out of shipping profits including profit from disposal of ships, interest on funds used as working capital or for the financing/operation/maintenance of a qualifying ship. But also it can include profits by qualifying secondary activities, loan relationship profits and foreign exchange gains, which would otherwise be trading income, gains on disposal of tonnage tax assets.

It may be applicable to any shipowner, charterer or ship manager who owns charters or manages a qualifying ship in a qualifying shipping activity. A qualifying ship is any seagoing vessel certified under applicable international or national rules and regulations and registered in the ship register of any member of the IMO and/or the International Labour Organisation. The regime specifically excludes certain types of ships, such as fishing vessels, ships used primarily for sports or recreation, river ferries, non self propelled floating cranes and tug boats, etc.

The tonnage tax is calculated on the net tonnage of the ship according to a broad range of bands and rates prescribed in each country’s national legislation. As qualifying shipping activity can be though any commercial activity that constitutes maritime transport, crew management and/or technical management. The definition of maritime transport includes the traditional carriage of goods and passengers as well as ancillary services such as all hotel, catering, entertainment and retailing activities on board a vessel, the loading and unloading of cargo, the operation of ticketing facilities and passenger terminals, tonnage and dredging, cable laying, etc.

The tonnage tax system was created to favour the shipowner but now it also covers the ship management. Each Member State try to amend its national tonnage tax system and for this reason ask for the Commission to approve new aid or existing aid through the procedure of art 108TFEU. The Commission, in its trial to promote

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26 See 1.4
maritime transport in EU Member States, created a guideline for the state aid in maritime transport, which had been revised twice\textsuperscript{27} and each Member State until now implement it through the Decisions issued by the Commission.\textsuperscript{28}

### 2.3 INDICATIVES EXAMPLES OF TONNAGE TAX SYSTEM IN SOME EU COUNTRIES

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.

In Greece, the tonnage tax applies to all vessels under the Greek flag, without distinction, according to whether they are owned by tax residents or non-residents of Greece. There is no restriction in Greek law concerning the residence of the shipowner. The only restriction concerns the nationality of the owners. According to art 5 of Greek Maritime Law Code amended by Presidential Decree no 11/2000, Greek ships have principally to be owned as to more than 50% by Greek nationals or EU nationals. However, under article 13(2) of Law Decree no 2687/1953, Greek ships can also be owned by foreigners, including foreign companies.\textsuperscript{29} The Greek model combines the advantages of a lump sum income taxation system and the tonnage tax system stricto sensu.

Cyprus is the biggest third party ship management centre in the EU with about 60 ship management companies operating in the territory and a substantial number of major ship management companies have chosen Cyprus in which to locate their

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\textsuperscript{27} Financial and fiscal measures concerning shipping operations with ships registered in the Community, SEC (89/ 921 final 3.8.1989, Community guidelines on State Aid maritime transport 97/C 205/05 and Community guidelines on State Aid maritime transport OJ C 13,17/1/2004
\textsuperscript{28} See Theocharidis G& Matsos G the new US Regulations regarding the Taxation of Income deriving from Vessel Operation (2003) END 417,426

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headquarters. Cyprius adopted first time the tonnage tax system in 2010 instead of the corporation tax system, under European Union state aid rules for international maritime transport as we will analyze below and which is authorised by the Commission authorized until 31 December 2019. The simplified tonnage tax system extends the favourable benefits to owners of Cyprus, flag vessels and ship managers to owners of foreign flag vessels and charterers. It also extends the tax benefits that previously only covered profits from the operation of vessels in shipping activities to cover profits on the sale of vessels as well as interest earned on funds used other than for investment purposes and dividends paid directly or indirectly from shipping related profits.

According to consistent Commission view, tax incentives given to international shipping business are state aid, which has to be judged as compatible with the internal market rules considering the extremely competitive nature of the maritime sector and especially considering the competition which EU registries face from open registries (flags of convenience).

The Commission through the document of 1997 entitled “Community guidelines on state aid to maritime transport” expressed its opinion where accepted that zero tax is the ultimate limit which the European Commission will accept as a maximum level of aid. However, the revised document of 2004 refers also to cases in which zero tax would not be accepted.

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30 N37/2010
CHAPTER THREE: THE FISCAL AID IN MARITIME TRANSPORT THROUGH COMMISSION AND CASE LAW

3.1 THE GUIDELINES FOR STATE AID IN MARITIME TRANSPORT

From the beginning of the eighties, the number of ships flagging the flags of the Member States and the number of EU citizens working as seafarers have been sharply decreasing. In a highly competitive market, in fact, many of the traditional shipping countries had seen their ship owners taking advantage of international capital and labour markets, as well as of the existing wide variety of ship registers around the world.

In order to counter this phenomenon, the Member States and the Community, within their respective competence, have used the instrument of State aids which is permissible in specific sectors\textsuperscript{31} under some general conditions. The state aid cannot be granted if it distorts competition between Member States to an extent contrary to the common interest. It must be transparent and always be restricted to what is necessary to achieve its purpose and finally it should not be at the expense of other Member State.

In the case of maritime transport, state aid in the form of operating aid aims to improve the international competitiveness of European shipping and in addition, to encourage re-flagging of EU owned vessels, increasing the employment of European Seafarers. For this reason Commission decided to set guidelines for state aid in maritime transport so as to secure that Community objectives were being served without any distortion of the competition in trade between Member States.

The first Guidelines on State Aid to Maritime Transport were adopted by the Commission in 1989. A new Communication was adopted in 1997 and was replaced by the Guidelines that are until now in force, published on 17 January 2004.

In 1989 the Commission established guidelines defining the conditions under which State aid to shipping would be considered compatible with the common market.\textsuperscript{32} \textsuperscript{33} The main objectives were the maintenance of ships under Community

\textsuperscript{31} The three sectors are consisted of the investment aid for regional development areas, of the reduction of environmental taxes and of operating aid in maritime transport

\textsuperscript{32} See community guidelines in State Aid to maritime transport 97/C 205/05 paragr 1.3
flags and the employment, to the highest possible degree of Community seafarers, trying to cover the problem of the cost gap between the fleet registered in Member States and vessels flags of convenience.\(^{34}\)

In March 1996, the Commission concluded that there was a need for the guidelines to be revised. The objectives that were set up in 1989 remained valid. However, the means of achieving these objectives required aid to be more closely linked with specific actions. For this reason the guidelines of 1997 covered any aid granted by EC Member States or through State resources in favour of maritime transport, including any financial advantage which was funded by public authorities (whether national, regional, provincial, departmental or local level). The policy of these revised Guidelines was to safeguard EC employments (both on board and on shore), to preserve maritime know-how in the Community and develop maritime skills and to improve safety.

The major problem with third countries was their attractive low tax environment which is until now milder than within EC Member States. In order to counter this tendency, the Commission adopted the opinion that Member States must take special fiscal measures\(^{35}\) to improve the fiscal climate for shipowning companies and for seafarers, 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 and abandoning the corporate tax system and adopting the tonnage tax system. All these fiscal alleviation measures can be considered to be state aid.

In 2004 these guidelines revised again retaining the same aim with the previous guidelines. However, the objectives of these revised guidelines are more expanded.

They tried to provide a safe, efficient, secure and friendly maritime transport, encouraging the flagging or re-flagging to Member States' registers and contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets. They tried to maintain and

\(^{33}\) Financial and fiscal measures concerning shipping operations with ships registered in the Community, SEC (89) 921 final,3.8.1989

\(^{34}\) The cost gap tried to be calculated with an hypothetical example between two countries. Portugal had the cheapest flag in the Community and Cyprus was thought as vessel flag of convenience

\(^{35}\) Conor Quigley q.c, o.p. p. 32
improve maritime know-how, protecting and promoting employment for European seafarers, and finally to contribute 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, provided that they will comply with the international standards and Community law, including those relating to security, safety, environmental performance and on-board working conditions and they are operated from the Community.

The Guidelines are applicable to maritime transports as they have defined by regulations. The definition covers the intra-Community shipping services and the third country traffic. The Guidelines don’t include aid to shipbuilding. Investments in infrastructure are not normally considered to involve State aid 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. The Commission has also 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. The towing of other vessels and the dredging fall under the definition of maritime transport but are covered by guidelines only if more than 50% of the towage and the dredging, respectively, activity effectively carried out by a tug during a given year and they are registered in a Member State.

Tax relief is primarily for shipowners and mainly for their earnings from the operation of EU-flagged vessels. However, it may also apply exceptionally to the entire fleet of an EU-based shipowner, provided that i. the fleet is managed in the EU and all vessels satisfy relevant standards on safe operations and employment conditions, ii. that EU flagged vessels are increased or maintained, iii. that it

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36 Council Regulation No 4055/86 and art 2(1) of Council Regulation No 3577/92 applying the principle of freedom to provide services to maritime transport
37 The carriage of passengers or goods by sea between any port of a Member State or any port or offshore installation of another Member State
38 The carriage of passengers or goods by sea between any port of a Member State or any port or offshore installation of a third country
39 within the meaning of Council Regulation (EC) No 1540/98
contributes to economic activity and employment in the EU, iv. that the evidence which is normally required to prove the contribution to EU economic activity and employment includes, v. data on vessels under EU flags, vi. the number of EU nationals employed on vessels and on shore activities and vii. the amount of investment in fixed assets. Tax relief may also be granted to ship management companies providing technical and crewing management\textsuperscript{40}, which have acquired from shipowners full responsibility for the operation of vessels. Ship managers should have the majority of the vessels they manage under EU flags.\textsuperscript{41} The aim of maritime guidelines was to protect shipowners but ship managements are also covered by them and nowadays from the ship management\textsuperscript{42} guidelines. Maritime guidelines wanted to ensure either both the crew and technical management of the such vessels or their commercial managements and only under the condition that the tonnage of such vessels does not exceed four times the tonnage of vessels for which companies offer together the crew, technical and commercial management.\textsuperscript{43} After the issuance of the ship Management guidelines, they changed the need for both crew and technical management so as to be covered by tonnage tax regime. They state shipmanagers can participate in tonnage tax schemes even if crewing and technical management are provided separately.\textsuperscript{44} The Commission gave definitions of what constitutes technical\textsuperscript{45} management and crewing management\textsuperscript{46} and stipulated there must be an

\begin{footnotes}
\item[40] The fact that a ship management company does not ensure the commercial management of vessels means that it must ensure at least the two other functions
\item[41] Phedon Nikolaides, fiscal aid for maritime transport p 231
\item[42] OJ C132, 11.6.2009
\item[43] Decision N563/2001 on the Danish tonnage tax
\item[44] See case n37/2010 of Cyprus
\item[45] Technical management services are defined as follows: 1. the provision of competent personnel to supervise the maintenance and general efficiency of the vessel, 2. The arrangement and supervision of dry dockings, repairs, alterations and the upkeep of the vessel to the standards required by the law of the flag of the vessel and of the places where the trades and all requirements and recommendations of its classification society, 3. The arrangements of the supply of necessary stores, spares, and lubricating oil, and may include 4 other relevant functions usually performed by the ship manager as defined by the BIMCO Standard ship Management Agreement.
\item[46] Crew managements services are defined as follows: 1. selecting and engaging the vessel’s crew, including payroll arrangements and insurances for the crew, 2. Ensuring that the applicable requirements of the law of the flag of the vessel as well as any additional requirements imposed by this Law are satisfied in respect of manning levels, rank, qualification and certification of the crew and employment regulations including crew’s tax, discipline, and other requirements, 3. ensuring that all members of the crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate flag State requirements, 4. Arranging transportation of the crew, including repatriation, 5. Training of the crew and supervising their efficiency and may include 6. Other relevant
\end{footnotes}
economic link with the EU proven by the fact that ship management is carried out in the territory of one of more Member States and that mainly Community nationals are employed in land based activities or on ships. Two third of the tonnage of the managed ships is supposed to be managed from the territory of the Community. The tax base calculations differ to that of shipowners in that base is much lower (25% of that which would apply to the shipowner for the same tonnage).

The Member States differ one another about the type of state aid that is applicable to their national law. Some have chosen to provide a friendly tax environment to shipping companies and some other the return of tax to seafarers. Taking into consideration that Member States do not have the same tax system, both systems can be applicable in danger of the distortion of the competition between the Member States. However, the Guidelines propose as indicative tax measures the reduced or zero rate of corporate taxation, the accelerated depreciation on investment in ships, non-taxation of the profits made on the sale of ships for a number of years and of course the tonnage tax regime.

The European Commission confirmed on October 2 2013 that it had decided to leave the European Union maritime state aid guidelines unchanged, although there was considered that there was a need for them to be changed in 2011, year of expiry of them. However, the Directorate-General for Competition (DG COMP) said that “the Commission has decided not to modify the current guidelines on state aid to maritime transport for the time being because the current approach which had positive effects on employment and competitiveness is still appropriate”. The European Community Shipowner’s Association asked for some clarification of minor points within the guidelines and exactly about the service ships, chartering and ancillary guidelines. Shipowners would argue in favour of the formal inclusion within the state aid guidelines of service ships such as cable-layers. Service ships are included as the result of individual competition decisions by the Commission. On chartering, shipowners wanted the Commission to introduce more flexibility as far as the number of chartered in vessels owners can bring under the tonnage tax regime.

functions usually performed by the ship manager as defined by the Baltic and International Maritime Council (BIMCO) Standard Ship Management Agreement.

47 Antoine Colombani told to Maritime Watch on November 6,2013
48 ECSA
ancillary services ECSA suggested revenues from onboard service such as gambling be eligible for inclusion under tonnage tax rules through ring fenced so as not to complete with onshore services.

3.2 THE EVOLUTION OF STATE AID IN MARITIME TRANSPORT IN THE FORM OF TONNAGE TAX SYSTEM THROUGH CASE LAW

The Member States tried to follow the guidelines in Maritime Transport, set out by Commission, through cases where they ask for the Commission’s permission if the State’s intervention in relation to the fiscal field in the shipping industries is compatible with art 107(3) TFEU. Although the majority of Member States have adopted measures which provide fiscal incentives to their shipping industry in line with the Guidelines, a number of recent cases have highlighted particular problems with the interpretation and scope of application of some of the requirements of the Guidelines and especially about what maritime activities can be included in the tonnage tax system and to what extent its of them and if there are special criteria that permit activities to be taxed under tonnage tax system regime. The below table shows us cases from different Member States which ask for the Commission to open the investigation procedure so as to justify if their amendments in their tonnage tax system are pursuant to art 107 (3) TFEU and covers cases from 2000 until now:

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<thead>
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<th>CASE NUMBER</th>
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<th>TITLE</th>
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<td>C2/2008</td>
<td>IRELAND</td>
<td>25.2.2009</td>
<td>TONNAGE TAX MODIFICATION</td>
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<tr>
<td>C22/2007</td>
<td>DENMARK</td>
<td>13.1.2009</td>
<td>DANISH TONNAGE TAX-CABLE LAYING VESSELS</td>
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49 See cases no 5/07 (ex N469/05) , C58/07 (ex 240/07) and C22/07 (ex N43/07) about Denmark tonnage tax system and the amendments that required to do on it
50 See also case No C 34/07 (ex N93/2006) related to the introduction of a tonnage tax system in favour of international maritime transport in Poland
51 From European Commission-Competition http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result
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<td>REGIME D IMPOSITION FORFAITAIRE SUR LA BASE DU TONNAGE EN FAVEUR DE COMPANIES DE TRANSPORT MARITIME</td>
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<td>SLOVENIA</td>
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<td>CHANGE TO THE TONNAGE TAX REGIME</td>
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<td>19.7.2006</td>
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<td>CYPRUS TONNAGE TAX SCHEME</td>
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<td>IRELAND</td>
<td>10.3.2009</td>
<td>INTRODUCTION OF A TONNAGE TAX FOR LARGE VESSELS AND SHIP MANAGEMENT</td>
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</tbody>
</table>
### 3.3.1 BASIC PROBLEMS FACED BY COMMISSION THROUGH ITS DECISIONS IN RELATION TO TONNAGE TAX SYSTEM UNTIL 2009

Prior to 2009 there was some confusion about what sea going transport activities can be included under the guidelines and were subject to tonnage tax system instead of the corporate tax system. For example Denmark and Ireland proposed to amend their tonnage tax system and especially Denmark wanted to submit the profits on the sale of tonnage-taxed vessels under tonnage tax system. Moreover, it wanted to change the eligibility of the gross tonnage of chartered vessels so as to be ten times greater than the gross tonnage owned by the shipping company itself in relation to the existence ratio of 1:4 (one ton owned for four tons chartered in on a time or voyage basis). Finally, Denmark also wanted tonnage tax system covers income from the management of pools vessels and non tonnage tax companies to be allowed.

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52 Cases C58/2007 (ex N240/2007) and C 2/08 (ex N527/07)
retroactively to enter to favorable tonnage tax system as from 2001. The Commission accepted the first one about the profits which derived from the sale of eligible vessels but rejected the retroactively entrance of maritime companies in the tonnage tax system. Furthermore, about the proposed ratio 1:10 that proposed Denmark, Commission had its doubts because of its former decision where it established a rule whereby the part of the fleet tax. Tonnage tax system may cover only percentages no less than 20% of the tonnage tax of the fleet which are owned by the beneficiaries and for this reason any additional capacities must be taxed under normal corporation tax. In the same reasoning about the exceeding threshold, the Commission judged and also rejected the forth proposal of Denmark about the management of the pool fees under the tonnage tax. In Ireland, the Commission opened the formal investigation procedure53 because Ireland proposed to delete from its tonnage tax legislation the requirement that not more than 75% of eligible ships could be chartered in54. The Commission repeated that “even though the guidelines do not mention any limits for the inclusion of time chartered ships under tonnage tax schemes, in its decision making practice the Commission has authorised schemes where companies with a ratio of 1:3 or 1:4 owned to time chartered ships where eligible to tonnage tax. The exception of the 1:4 ratio as compared to the initial 1:3 ratio in Decision No 563/2001/EC concerning the initial approval of the Danish tonnage Tax was justified on the basis of an in depth market analysis”. The Commission in this case found no invasion of the principle of fiscal competition with other Member State but it also found that it the fully removal of the time charter limit may be contrary to principle of common interest according to art 107 par 3c TFEU.

One other confusion was about the possibility of cable layers and dredgers may be included under the guidelines5556. This confusion has arisen because of an old EU definition57 of maritime transport as port-to-port or port to offshore facility activity. Rather than operate between terminals, cable layers operate on the high seas. However, via a number of subtle changes like the new definition of maritime transport

53 See here page 10
54 In Irish legislation chartered in vessels are provided with a crew by the charterer, in contrast to bare boat chartering, where the lessee has to man the crew
55 See case C22/2007 (ex 43/2007) of Denmark about the extension to dredging and Laying Cable Activities of the Exemption of Maritime transport Companies from the Payment of Income Tax and Social Contributions of Seafarers
56 See also case N 93/2006 (Poland) Tonnage Tax in favour of International Maritime Transport
57 See above Council Regulation No 4055/86
adopted by Court of Justice\textsuperscript{58}, the guidelines have been widened to include dredgers, tugboats and cable layers in addition to classic cargo-carrying ships. This expansion seems to be compatible with guidelines although Commission had its doubts. The Guidelines state that “\textit{fiscal arrangements for companies (such as tonnage tax) may be applied to those dredgers whose activity consists in maritime transport for more than 50\% of their annual operational time and only in respect of such transport activities}” and for this reason it is undoubtful that these maritime activities consist maritime transport\textsuperscript{59}.

Similarly, in case N 93/2006 of Poland, the Commission accepted that not only dredging but also towage could be covered by tonnage tax and the basic criterion to measure was whether the 50\% threshold is attained was the operational time of each tug or dredger concerned over a fiscal year, and not the revenue generated.

Moreover, the Commission accepted ancillary activities\textsuperscript{60} which can be object of tonnage tax under the provision that they are provided by the tonnage tax companies themselves.

In this Polish tonnage tax application, the European Commission established a further set of principles. One of then was that tonnage tax is applicable to both legal and natural persons because one entity can have different forms of legal structures. For this reason, no matter the natural persons are covered by income tax, they can be also covered by the tonnage tax if these natural persons have a legal entity which carries out maritime transport. The only restriction between natural and legal persons is if the calculation of the tax base won’t be the same.

One other important principle set out by this case of Poland was about the commercial ship management concluding the Commission that there is no need for companies to have its registered office to Poland so as to be covered by Poland tonnage tax regime. There is a need to have their establishment in one Member State of the Union or EEA and one of the following three conditions to be fulfilled: i. either all key decisions should be taken in Poland, or ii. The headquarters should be situated in Poland or iii. The senior personnel should be established in Poland. These three

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\textsuperscript{58} Court of Justice defined that maritime transport is the carriage of goods or passengers at sea in the case Greece v Commission C-251/2004

\textsuperscript{59} See also case N 37/2010 of Cyprus approved by Commission

\textsuperscript{60} Examples of ancillary activities are the leasing and the use of containers, the loading, uploading and repair activities, the operation of passenger terminals etc
conditions aim to verify that tonnage tax companies actually contribute to the economic activities and employment in Poland which is line with the guidelines.

Finally, as far as the ring-fencing measures, Commission usually requests from Member States a series of measures so as to ensure that no activities other than maritime transport would indirectly benefit from the regime.

These measures could be: i. the verification of commercial transactions across the ring face based on the arm’s length principle.

ii. rules on the fair sharing of the cost of capital expenditure between eligible and ineligible activities,

iii. rules on the fair allocation of revenues between eligible and ineligible activities

v. the all or nothing option for maritime groups (all eligible entities of the group shall opt the tonnage tax where at least one of them does).

In the said case of Poland, it adopted the all- or nothing option for tonnage tax for five years, whereas the minimal duration was ten years. The Commission required the minimum of ten years because it does not want to treat unequal between vessels and shipowners operating under different Member States registers.

All the tonnage tax regimes approved by the Commission over the last decade provide for ring fencing measures including that concerned by the notified measures, that is to say the verification of transactions between tonnage tax entities and non tonnage tax ones.  

3.3.2 CASES OF STATE AID IN MARITIME TRANSPORT FROM 2009 UP TO NOW

One of the most important cases of state aid in this field of recent years was that of Cyprus (N37/2010) which approved by the Commission on 24.3.2010 and has been granted until 31th December 2019. Aim of it was to promote international maritime through the favourable tonnage tax system serving all the objectives of the guidelines. Cypriot tonnage tax responded to owners of ships registered under the

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61 See case N5/07 of Denmark, the British regime approved by case N 790/99, the Spanish regime approved by case N736/2001, the Danish regime approved by case N 563/01, the Finnish regime approved by case N 195/02, the Irish regime approved by case N 7504/2002, the Spanish regime approved by case N 572/02, the French regime approved by case N 737/02 etc
Cyprus flag\textsuperscript{62}, to owners of EU ships or nor EU ships under any foreign flag recognized by Cyprus who are tax residents\textsuperscript{63} in Cyprus, to charterers of ships under any EU or non EU flag (recognized by Cyprus) who are tax residents in Cyprus and to ship managers providing crew\textsuperscript{64} and/or technical\textsuperscript{65} ship management services to ships under any EU or non EU flag (recognized by Cyprus) who are tax residents in Cyprus.

The Commission accepted the proposed measures for the international maritime companies putting some restrictions\textsuperscript{66} so as to be avoided by some companies to be favorable by the tonnage tax regime. Cyprus new regime does not matter about the flag link which was one of the basic objectives of the guidelines. Furthermore Commission accepted ancillary activities can be covered by the tonnage tax like the hotel, the catering, the entrainment and retailing activities on board of a qualifying ship operated by the qualifying owner or the qualifying charter, including the moving of containers within a port area immediately before or after the voyage under the provision that they are exercised by the shipping companies and they serve the main activities.\textsuperscript{67}

One more recent case was that of the Finland( SA 30515-N448/2010) approved by the Commission on 20.12.2011. The Finnish tonnage Tax Act approved by Commission in 2002 \textsuperscript{68} but it has not achieved its objectives. For this reason asked for Commission to renew its tonnage tax system making some implementations. First of all the Commission accepted the new rule on the flag requirement where beneficiaries will be obliged to have at least 60\% of their tonnage registered in the EU. Instead of the previous 50\%, now shipping companies would be able according to Finnish authorities to charter in with crew 75\% of tonnage and still be subject to tonnage tax with respect to all eligible income from its fleet.\textsuperscript{69} Furthermore companies would be able to charter in with crew up to 80\% of tonnage in the context of an expansion of operations for a limited period. This provision was set to Commission with a restriction making it easier to keep on shore activities related to the vessels

\textsuperscript{62} Cyprus ships
\textsuperscript{63} A tax resident is a person who is resident of Cyprus within the meaning of the Cypriot Income Tax Law
\textsuperscript{64} See reference 46
\textsuperscript{65} See reference 45
\textsuperscript{66} by the Maritime and shipmanagement guidelines respectively
\textsuperscript{67} Not include the sale and the distribution of shipping supplies
\textsuperscript{68} N195/2002
\textsuperscript{69} Income related to maritime transportation of persons and goods and income from eligible ancillary services
under tonnage tax within the community. Commission accepted the newly introduced possibility for a maritime transport company within a group to be able to opt for the tonnage tax independently of the taxation regime applicable to the other maritime transport companies of the same group\textsuperscript{70} because some companies can lose a lot of money by this system than to corporate tax system. The Commission also accepted the proposed set of the ring-fencing measures so as to limit abuse\textsuperscript{71} and considered that it is correct the fact that subsidies between group of companies will not be covered by the tonnage tax.

Finally, the most recent case about state aid in this field is No S.A. 33829 (2012/C) of Malta which approved by the Commission in 25.7.2012. The decision covered tonnage tax regime, exemption from taxation of capital gains arising from the sale of ships, exemption from taxation capital gains and dividends related to shares in shipping organizations, exemption from the duty on documents and transfers.

It is about a case where the authority of Malta proposed totally different measures which are opposite to maritime guidelines and to decisions of Commission. For example the national law of Malta gives a more wide definition about the maritime transport and appears to allow the competent authority considerable discretion to consider eligible to the Maltese tonnage tax regime any other activity. Commission through its decisions has limited the vessels that can be eligible to tonnage tax regime and that are not the cruise ships, the oil rigs, the fishing vessels, the yachts, the pontoons and the non propelled bargers.

Although the Commission waited from the Maltese Authorities to submit their opinion about the previously measure, it has decided to reject the proposed measure about the flag link requirement where Malta stated that under its legislation, if the 60% criterion is not met, non EEA flagged ships may still be entered into the tonnage tax regime if the share of such ships in the company’s fleet has not increased over the last three years or over an even shorter period\textsuperscript{72}. This is not in line with the Maritime guidelines, which lay down a three year criterion for a purpose that is completely different from the one indicated in the Maltese legislation. Under the maritime guidelines if tonnage tax beneficiary fails to submit a commitment to keep or increase

\textsuperscript{70} Provided it engages in either passenger or freight transport as separate business entity and under separate business management.

\textsuperscript{71} See also case N 195/2002

\textsuperscript{72} If the beneficiary was established less than 3 years ago
the share of ships under EU flag compared to the situation on 17 January 2004 and for ship managers on 11 June 2009, the member State should refuse entry into the tonnage tax regime of any additional non-community ship, unless the share of EU flagged ships in the global tonnage of all tonnage beneficiaries in that member States has not decreased over the last three years. The Commission has not answered yet if some of TFEU and eligible to tonnage tax system. However, it is a very interesting decision and it will become more intersecting when the final decision is published.
CHAPTER FOUR: CONSEQUENCES OF STATE AID IN CARRIAGE OF GOODS BY SEA

The flat rate tonnage tax is the main element of the state aid guidelines through other forms of state operating aid which are also permitted.

The shipping industry crisis of 2009 repeated in some sectors over 2011, 2012, and 2013 made the tonnage tax regime less favourable in some cases and for this reason Commission approved the possibility of some companies to decide independently if they keep tonnage tax regime or corporate tax regime because the losses would be huge if they stayed in tonnage tax regime without profit.

Despite of the period of crisis, tonnage tax regime can be characterized as a favorable regime which covers the most sea going transport activities extended the guidelines by case law.

The state aid guidelines have been rolled out across almost the entire EU over the last decade. Among the only EU member States yet to adopt them are Sweden where there are said to have been political problems, Portugal which in any case benefits from its association with the Madeira register and Luxembourg where owners already enjoy low corporate tax rates.

Among governments to have adopted the scheme relatively late are Lithuania (2006), Poland (2009), Slovenia (2009) and Cyprus (2010). The Cypriots claim to have one of the only open registers to have received European Commission approval.

Finland’s tonnage tax application was approved by the European Commission in December 2011 after a long delay attributed by some industry to the handover of competence between DG MOVE and DG COMP. The Commission denied it was its fault the delay blaming instead the Finnish authorities for sending only partial information.

Nowadays, it is pending the Maltese tonnage tax regime and Commission would re-examine five tonnage tax regimes including the Greek Scheme and the Cypriot scheme. There is the opinion that the changes would make the state aid to be granted based on more strict rules. The revised France tonnage tax regime became an official probe on November 6 2013 and yet it hasn’t published. Commission focused on France’s apparently lax time charter rules.
The advantages are more than the disadvantages for the institution of State aid on the maritime transport. Many can claim that state aid distort the free competition. They can also support through state aid, the tax alleviations accept certain companies which can make them to monopolize in the market instead of other companies from other fields. Furthermore the state aid is paid by the income tax of the residents of the Member State. All of them are some of the disadvantages of the state aid but as we examined above European Shipping industry is the first power in the world and needs to take action so as to help its Member State separately.

The treaty of Lisbon aims to the employment, to the growth and to the protection of the competition. For this reason, EU must offer a safe and stable tax environment to its Member States.

Below is a table where appears how much money each Member State spent for state aid in maritime transport from 2005 up to 2009 according to the European Commission - Competition Directorate. The amounts are in million euro.

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<tr>
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<td>159,4</td>
<td>154,4</td>
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<tr>
<td>UNITED KINGDOM</td>
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<td>108,1</td>
<td>122,5</td>
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<td>140,1</td>
<td>161,9</td>
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</table>

From the above we can see that the biggest amounts spent by Italy and France. Ten Member States didn’t grant any state aid like Austria, Bulgaria, Luxembourg, Greece, Malta, Portugal, Poland, Slovenia, Slovakia and Czech Republic in this period.

The Greek Minister of Commercial Maritime shipping justified the fact that Greece did not grant any state aid. They believe that they can’t promote competitiveness by granting state aids because Greek economy has restricted possibilities and the fleet is unproportionally of very big size.

Despite of them, the amounts spent by other Member States have increased from year to year with the exemption of 2007. The amounts that have spent all these years in maritime field are 50% higher than the total amounts granted in state aid in the other types of transport.
CONCLUSION

As we examine, State Aid is granted to Member states so as to become competitive in the international maritime field. The main objectives of State aid in this field are:

• the promotion of the use of European flags,
• the promotion of the European maritime industry and cluster,
• the promotion of the sea profession in the Union.

The idea is to prevent flagging out and retain a Community fleet by different kinds of reduction or exemption of taxes.

Some of these kinds are:

– the Symbolic tax on ship-owning companies: *Tonnage Tax*
– the Reduction in or exemptions from social charges
– Reductions in or exemptions from seafarer’s income tax

From all the above we can conclude that state Aid in this field is very vital because of the strong competition between other non EU countries which offer many tax alleviations to companies which are registered there or with fleet under their flag.

The Commission on October 2013 decided not to revise the guidelines of state aid in maritime transport because it judged that it had positive effects on employment and on the competitiveness of the European industry.

Although the guidelines aim was to help only shipowners, finally they also covered the ship managements. In 2009, the Commission finally set out special guidelines for the ship managements helping to explain more easily the basic maritime guidelines.

Nowadays, the scope of state aid make it absolutely necessary in this field because the competitiveness is very huge and European Union and each member State separately need to have a strong economy based on the maritime field and Commission must approve state aid which promote the aim of them.
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